

IN THE COURT OF COMMON PLEAS OF
LUCAS COUNTY, OHIO

STATE OF OHIO,

)

PLAINTIFF,

) CASE NO. CR06-3339

v.

)

ROBERT WILSON

) JUDGE BARBER

DEFENDANT.

EXHIBIT 16

[REDACTED]

- - -
BE IT REMEMBERED, that in the trial of
the aforementioned cause on September 4, 2008,
before the Honorable James E. Barber, in the
Lucas County Court of Common Pleas, the following
proceedings were held, to wit:

APPEARANCES:

On behalf of the Plaintiff:
Assistant Lucas County Prosecutor,
Michael Loisel, Esquire

- - -

On behalf of the Defendant, Robert Wilson:
Ronnie L. Wingate, Esquire
Neil S. McElroy, Esquire

- - -

Stacey L. McDevitt, RPR, Official Court Reporter
Lucas County Common Pleas Courthouse,
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- - -

1

I N D E X

2

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3	Dr. Scala-Barnett	11	34	37	
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1 SEPTEMBER 4, 2008
2 COURTROOM #3
3 9:18 A.M.

4 (WHEREUPON THE FOLLOWING DISCUSSION WAS
5 HELD OUTSIDE THE PRESENCE OF THE JURY.)

15 MR. WINGATE: Before you start, Mike, do
16 we know which juror it was?

17 MS. JOHNSON: It is written on it Juror
18 Number 2, Al --

19 MR. MCELROY: Al Montague.

20 THE COURT: Yes, Juror Number 2, Al
21 Montague.

22 MR. LOISEL: Well, I mean with respect
23 to this, Judge, I will ask that it be marked and

1 be made a Court exhibit so it can be kept for the
2 record. At this point, I mean, we haven't even
3 begun deliberations yet. I don't think it is
4 proper for the Court, and I think the Defense
5 would agree to respond, just indicate that you
6 received a question and we can't respond at this
7 time. I mean, I don't know how you want to
8 phrase it, but we can't answer his questions.

17 MR. WINGATE: That would be fine. Can I
18 see the note?

19 THE COURT: Sure.

20 MR. WINGATE: Yeah, Your Honor, that
21 would be fine just to instruct the Bailiff to
22 tell the juror that we received a note but we
23 can't respond to it.

1 THE COURT: All right. Ms. Johnson,
2 you heard --

3 MS. JOHNSON: I did. Would you like for
4 me to do that now?

5 THE COURT: No. Wait until we're done
6 here.

7 MR. LOISEL: Judge, for purposes of the
8 record, do you want to do that when the jury is
9 seated or would you rather do it as part of the
10 record that you can indicate that the Court
11 received a question from --

12 THE COURT: I can do it myself right
13 from the bench if you want.

14 MR. LOISEL: I think it would be more,
15 again, for the purposes of the record I think
16 that would be better than having the Bailiff just
17 tell the jurors.

18 THE COURT: Sure, I could do it right
19 from the bench just before we get started.

20 MR. MCELROY: That may raise an issue
21 when they get back there, not that the jurors are
22 not going to discuss that question with the
23 jurors anyway, but it may raise an issue that

1 makes a big deal of, well, what question did you
2 ask, why can't you answer it. And maybe we could
3 just bring him in.

4 THE COURT: No. I'm just going to
5 tell the panel that I received a note and we
6 can't respond.

7 MR. LOISEL: Correct me if I am wrong,
8 but I think essentially the reason you can't
9 answer this question is it is not the proper
10 time. You will instruct them that, I mean, at
11 some point they can ask questions, but they
12 haven't received the case yet and, therefore, it
13 is improper for them to begin asking questions
14 until they receive the entire case. I mean,
15 that's ultimately -- I don't know if you want to
16 read the question into the record so it is clear.

17 THE COURT: I'm just going to mark
18 this as a Court's Exhibit Number 1.

19 MR. LOISEL: Very well.

20 THE COURT: What else do we have at
21 this point?

22 MR. LOISEL: Judge, the first witness
23 State intends to call is the Deputy Coroner,

1 Dr. Diane Scala-Barnett. She has
2 approximately -- well, the State intends to show
3 one, two, three, four, five, six, approximately
4 seven photographs from the autopsy. I've shared
5 those with Defense Counsel. I would ask that we
6 be allowed to publish those to the jury for the
7 purposes of her benefit to explain what each
8 picture depicts.

9 THE COURT: Once she's identified
10 them --

11 MR. LOISEL: Yes.

12 THE COURT: -- and qualified them.

13 MR. LOISEL: Obviously, yes.

14 MR. WINGATE: But procedurally you're
15 not putting it up on the screen and then going
16 through her identifying them. Are you showing
17 her that picture first? How do you intend to do
18 it?

19 MR. LOISEL: Well, I can do it however
20 the Court desires. I can show her the picture,
21 say Are you familiar with this picture? Yes.
22 I'm assuming she would say yes. What does it
23 depict? The whole idea is so that she doesn't

1 have to explain it twice, once while looking at
2 the picture and once while it is being published
3 to the jury. She can authenticate them. Are you
4 familiar with these pictures? Yes. Do they
5 appear to be in substantially the same condition
6 or the condition as when you saw them or took
7 them back in 1993? And I think if she can
8 authenticate them -- authenticate each and every
9 picture prior to publishing them, that's
10 obviously the State's request at this point. I
11 mean, obviously she's going to authenticate them.

12 MR. WINGATE: Your Honor -- could I see
13 them again, Mike?

14 MR. LOISEL: Yes.

15 MR. WINGATE: I'm sorry.

16 MR. LOISEL: I have explained to
17 Attorney Wingate that these pictures, and
18 obviously the Court can make its final ruling,
19 are not duplicative and I believe she will
20 testify as to the importance of each picture as
21 to why it is relevant in this particular case.

22 MR. WINGATE: Your Honor, I would, and I
23 understand I can anticipate the Court's ruling,

1 but for the record we would object to the
2 publishing of the photographs inasmuch as they
3 are somewhat gruesome and inflammatory and I
4 believe that it would be prejudicial against
5 Mr. Wilson to have them shown to a jury.

6 THE COURT: All right. Well, I
7 certainly understand your objection. I've been
8 in your chair on that issue before. So I'm going
9 to overrule your objection, the exception is
10 noted, and I'm going to allow you to publish
11 those. Once they are qualified and
12 authenticated, I will allow you to publish them
13 to the jury. What else we got?

14 MR. LOISEL: I don't think there are
15 any other matters that need to be addressed at
16 this point, Judge.

17 THE COURT: Okay. We anticipate
18 getting done tomorrow, right?

19 MR. WINGATE: Yes. No question.

20 MR. LOISEL: Judge, well, as we
21 discussed before, we're optimistic. Hope to get
22 done today but that is yet to be determined. But
23 the State intends to, if things go as expected,

1 to be finished with its case in chief prior to
2 lunch today.

3 THE COURT: Well, it is 9:25. All
4 right. Let's go do it.

5 (WHEREUPON THE PRECEDING DISCUSSION
6 OUTSIDE THE PRESENCE OF THE JURY CONCLUDED AND
7 THE FOLLOWING PROCEEDINGS WERE HELD.)

8 THE COURT: Before we get started, I
9 guess we should indicate I bid all of you good
10 morning, and just before we get started with the
11 testimony of the day, I should put on the record
12 here that I did receive a note from one of the
13 jurors, and I would only respond that there will
14 be a time when questions can be asked after all
15 the case has been presented, so until that time,
16 kind of keep your questions in mind and when the
17 proper time comes, you can reduce them to
18 writing. Mr. Loisel.

19 MR. LOISEL: Thank you, Judge. At this
20 time the State of Ohio called
21 Dr. Diane Scala-Barnett.

22 THE COURT: Call Dr. Barnett.

23 - - -

1 DIANE SCALA-BARNETT, M.D.,
2 being first duly sworn by the Court, testified as
3 follows:

4 THE COURT: Just give us your name and
5 spelling of your name.

6 THE WITNESS: It's Diane, D-I-A-N-E,
7 last name is hyphenated S-C-A-L-A-B-A-R-N-E-T-T.

8 DIRECT EXAMINATION

9 BY MR. LOISEL:

10 Q. Good morning, Doctor.

11 A. Good morning.

12 Q. Obviously the jury just heard your name.
13 Can you introduce yourself to the jury and where
14 you work.

15 A. I work at the Lucas County Coroner's Office.
16 I'm a physician, forensic pathologist, and a
17 deputy coroner.

18 Q. Now, Doctor, can you explain to us your
19 occupation and what are the duties that are
20 entailed with your job?

21 A. Well, basically every day I perform
22 autopsies to determine the cause and manner of
23 death. We issue death certificates and verdicts

1 to document those findings. We sometimes go to
2 scenes with our investigators and we testify in
3 court sometimes like today. Basically I do that
4 as the majority of my job. I also teach medical
5 students who are rotating through pathology and as
6 an elective at the Coroner's Office, so we teach
7 forensic pathology.

8 Q. Okay. And I guess before we get too far
9 ahead of ourselves, can you give us a little bit
10 of history with respect to your education and
11 background?

12 A. In a nutshell my educational background is
13 high school graduate; four years of college; a
14 year of graduate school; four years of medical
15 school; a year of internship; four years of
16 pathology residency; and a year of fellowship
17 training in forensic pathology.

18 Q. And with respect to that education, do you
19 hold any licenses or are you on any boards or
20 committees?

21 A. I'm licensed to practice medicine in the
22 states of Ohio and Illinois. I'm doubly board
23 certified in pathology and forensic pathology.

1 Q. And tell us what it means to be board
2 certified.

3 A. That means you have completed the required
4 testing and that makes you eligible to sit for
5 board examination to prove competency in your
6 field of expertise, and when you have successfully
7 passed that exam, that means you are board
8 certified.

9 Q. And how long, you may have already said
10 this, how long have you been a coroner?

11 A. I've been Deputy Coroner --

12 Q. Deputy Coroner -- I'm sorry.

13 A. -- since 1985.

14 Q. And is that when you received your board
15 certification?

16 A. No. I received it later. I had -- I
17 believe I had only one board when I started. I
18 got my forensic boards later.

19 Q. And can you explain to us essentially you
20 said board certified in forensic pathology. Can
21 you explain to us, you may have already done a
22 little bit, forensic pathology? What is forensic
23 pathology?

1 A. Well, you know, the pathologist is usually
2 the doctor that stays in the basement and looks
3 through microscope all day, and they are the ones
4 that diagnose disease and they look at tissues
5 under microscope, but there is a subspecialty in
6 pathology that deals with medical legal medicine
7 which is forensic pathology, and we are the
8 doctors that determine the cause and manner of
9 death by performing autopsies and considering what
10 the scene investigation is or what the
11 circumstances surrounding the death are.

12 Q. Now, you were working in this capacity back
13 in 1993, correct?

14 A. Yes, I was working at the Lucas County
15 Coroner's Office, uh-huh.

16 Q. Do you recall performing an autopsy on or
17 about December 3rd of 1993 on one Brenda Navarre?

18 A. I didn't recall it until I reviewed it.

19 Q. So, you had a chance to review -- what did
20 you review?

21 A. I reviewed our chart that we have and all of
22 my original notes and the autopsy protocol. I
23 also have in this chart the hospital records from

1 her admission, and the toxicology results, and the
2 investigator's report.

3 Q. And when you conduct an autopsy, do you make
4 a record of that autopsy? You just explained what
5 you reviewed, but do you make a record of each and
6 every autopsy that you perform?

7 A. Yes.

8 Q. And what are -- again, what are included
9 within your reports?

10 A. Generally what's included is there's a body
11 diagram where we take all of our notes during the
12 process. We may have several diagrams. From
13 these diagrams and notes we dictate an autopsy
14 protocol which, you know, is the formal report.
15 And in that body of the report you have the
16 external examination, the internal examination,
17 any injuries that occurred externally and
18 internally, any natural diseases that the person
19 may have had and also as part of that report, we
20 incorporate toxicology findings when we receive
21 those from the toxicology lab.

22 Q. And are those kept -- and where are those
23 records kept?

1 A. These record are secured actually at the
2 Coroner's Office.

3 Q. They are made every day part of your
4 business?

5 A. Yes.

6 MR. LOISEL: Judge, may I approach the
7 witness?

8 THE COURT: Yes.

9 Q. Doctor, I'm going to hand you what's been
10 marked previously as State's Exhibit 13, 14 and
11 15. If you could take a look at those for me,
12 please.

13 A. Okay.

14 Q. And are you familiar with --

15 A. Yes.

16 Q. -- State's Exhibits 13, 14 and 15?

17 A. Yes.

18 Q. Could you explain what State's Exhibit 13
19 is?

20 A. State's Exhibit 13 is actually the case
21 summary which is the very first page of the
22 autopsy report. State's Exhibit 14 is the body of
23 the report which describes all of the findings

1 that we just talked about, internal, external.
2 That is a five page report. And then the State's
3 Exhibit 15 is a copy of the toxicology report.

4 MR. LOISEL: And, Judge, may I
5 approach?

6 THE COURT: Sure.

7 Q. And, Doctor, I apologize this is out of
8 order number wise, but I would like to ask you to
9 look at State's Exhibit 23 as well. Are you
10 familiar with what that is?

11 A. Yes.

12 Q. What is that?

13 A. State's Exhibit 23 is a copy of the
14 Coroner's Verdict that is issued in every case by
15 the coroner.

16 Q. So that document -- was that document
17 prepared by you?

18 A. I'm sorry, what?

19 Q. I turned my back on you, I apologize. Was
20 that document prepared by you?

21 A. It is actually prepared by the office. Once
22 the autopsy is completed and signed out, the
23 coroner prepares it and signs it. It is actually

1 prepared on the computer from the findings and he
2 signs it.

3 Q. Now, Doctor, a couple of more questions
4 before we get to the autopsy that you performed
5 back in 1993. Let me ask you this: On average,
6 and I don't know if you can give us a number,
7 approximately how many autopsies do you perform in
8 a year?

9 A. A year?

10 Q. Well, we can break it down. If you prefer
11 to do it a month, you can tell me.

12 A. I prefer -- well that depends. Our job is
13 kind of seasonal if you want to know the truth.
14 We have many more autopsies around the summer and
15 holidays, but the numbers can change, but the last
16 time I counted I have performed over 8,000
17 autopsies.

18 Q. And with respect to those autopsies, have
19 you ever had an opportunity to testify in court?

20 A. Many times, yes.

21 Q. And can you put a number on it?

22 A. Hundreds.

23 THE COURT: Let me just interject

1 here. Who, in fact, is the coroner for Lucas
2 County?

3 THE WITNESS: It is Dr. James Patrick.

4 THE COURT: Dr. Patrick. Okay. Thank
5 you.

6 MR. LOISEL: Judge, at this time I
7 would ask that Dr. Barnett --

8 MR. WINGATE: I'm sorry?

9 MR. MCELROY: We are sorry. Go ahead,
10 Mike.

11 MR. LOISEL: -- be found to be an
12 expert in the field of pathology.

13 THE COURT: No objection?

14 MR. WINGATE: No objection.

15 THE COURT: So ruled.

16 MR. LOISEL: Thank you.

17 Q. Now, Doctor, can you explain to us, you did
18 an autopsy on one Brenda Navarre back in 1993 of
19 approximately December 3rd, correct?

20 A. Correct.

21 Q. And you had to review your notes to
22 familiarize --

23 A. Correct.

1 Q. -- yourself, correct?

2 Can you tell us first of all what you do
3 when you perform an autopsy?

4 A. Basically an autopsy is divided into three
5 parts. The first part of the autopsy is an
6 external exam where all of the external surfaces
7 of the body are viewed. Any injuries that have
8 occurred are documented on that body diagram that
9 I showed you, and we even document identifying
10 marks like scars and tattoos and surgeries and
11 anything that's seen externally, all of the
12 injuries. Pictures are taken, clothed and
13 unclothed.

14 And then when we finish that document,
15 the internal portion of the autopsy begins and
16 there is a Y shaped incision made. All of the
17 internal organs are removed and examined
18 individually. If there are any wounds or wound
19 tracks involving the internal organs, those are
20 all documented and photographed. And during that
21 time we also sample body fluids for drugs and
22 poisons and that's usually blood, urine, bile and
23 gastric contents, if those are available.

1 The last part of the autopsy, if
2 necessary, it is not always necessary, we retain
3 small pieces of tissue and we examine them under
4 microscope.

5 Q. And did you perform such an autopsy in this
6 particular case?

7 A. I did.

8 MR. LOISEL: And, Judge, may I
9 approach?

10 THE COURT: Sure.

11 Q. Doctor, I'm going to hand you what has
12 previously been marked at State's Exhibit 16
13 through 22. If you can just look at those for me,
14 please.

15 A. Yes.

16 Q. Are you familiar with what those are?

17 A. Yes.

18 Q. And without going into detail, what do those
19 pictures depict?

20 A. These are actual autopsy photographs that
21 depict Ms. Navarre's appearance at the Coroner's
22 Office prior to the autopsy. It shows the
23 external -- some of the external injuries, and

1 then also some of the internal injuries to the
2 head.

3 Q. And do those pictures appear to be, or are
4 they in the same condition as they were when they
5 were taken back in 1993?

6 A. Yes, sir.

7 MR. LOISEL: With that in mind, at this
8 point, Judge, I'm going to direct the coroner --
9 or the Deputy Coroner to refer to these exhibits
10 which will be shown on the screen.

11 THE COURT: All right.

12 MR. LOISEL: And I want to caution you
13 that some of these pictures are not very
14 pleasant, but it has to do with respect to the
15 autopsy as to what Dr. Barnett did back in 1993.

16 So, Doctor, I'm going to show you on the
17 screen what's been marked as State's Exhibit 16.

18 Q. You said you are familiar with that picture.
19 What does that picture depict?

20 A. That is the appearance of Ms. Navarre as she
21 was received in our office. The placard across
22 her chest is our autopsy from that year, which was
23 61393. She is wearing a hospital gown still

1 because she has just come from the hospital after
2 her death, and she still has in the breathing tube
3 and the endogastric tube, those haven't been
4 removed yet, but that's how she appeared when we
5 received her.

6 Q. And, Doctor, I will now show you what's been
7 marked as State's Exhibit 17. Can you explain to
8 us what that is?

9 A. This is a close-up photograph of
10 Ms. Navarre's face. Do you want me to start
11 discussing the injuries or --

12 Q. Yes. That was my next question. What is
13 the significance of this photograph? What does it
14 tell you?

15 A. Do you happen to have a pointer?

16 Q. I do not.

17 MR. LOISEL: Would that aid you in your
18 ability to describe --

19 A. I guess I can go over there. I just didn't
20 want to be in the way. All right. This is a
21 close-up photograph, you're looking straight on to
22 her face and you can see that she has a very long
23 suture injury across the forehead. This at one

1 time when she arrived had been opened but they
2 sutured it together, brought the skin margins
3 together and you'll notice that there is a lot of
4 abrasion around this wound. All this dark brown
5 discoloration is where the skin was abraded. This
6 laceration actually extends onto the upper eyelid
7 where they've also sutured it and it is also
8 abraded. Her eyes are very bruised and sort of
9 protruding a little bit. This doesn't mean
10 because her eyes are black that she was punched in
11 her eyes, that's not what that means. But
12 whenever you have an impact to the forehead, the
13 blood can suffuse down into the eyelids and become
14 very red and bruised but it is from a different
15 mechanism. There is also an injury that -- oh.
16 Okay. I can do that.

17 On this side of her head there were more
18 injuries which extended actually on the left side
19 which extended out over and into the ear and the
20 ear had been sutured. It was also abraded on this
21 area. I think we can go to the next one.

22 Q. The next picture is State's Exhibit 18.

23 A. Okay. Now you're looking at the right side

1 of her head and as you can see, there is a little
2 bit of abrasion, a little bit of bruise. Some of
3 these are actually paralleled so there's a little
4 pattern to them, but nothing like the opposite
5 side where there was more of an impact. So you
6 have extensive injury to this side, you have
7 extensive injury to this side. I believe this
8 side of the head, which is pretty much spared of
9 injury, was actually down on the ground, and this
10 blood in her ear is just clotted blood that has
11 come from a skull fracture which we'll talk about.

12 Q. I'll show you what's been marked as State's
13 Exhibit 19.

14 A. Okay. Now you're looking at the front
15 again. You can see that these abrasions extend
16 out onto the cheek on both sides and actually this
17 bone right here, your cheekbone, it is called your
18 zygomatic arch, and it is Injury Number 25 on our
19 protocol, was fractured, this whole cheekbone.

20 Q. And that's on the left side of her face
21 you're indicating?

22 A. It is on the left side of the face, and
23 unfortunately we don't have a good photograph on

1 the left side of her face, but this was all
2 lacerated and abraded over the ear, and it looks
3 just like this but on the side. I have it drawn
4 on my body diagram, and so that was also sutured
5 in here around the ear and in front of the ear.

6 Q. Now, before we go to the next exhibit, which
7 will take us into the internal aspect of the
8 autopsy. You've just explained to us through
9 pictures the injuries or the damage done to
10 Ms. Navarre. What were your findings within your
11 report without going into you said Number 25 on
12 your report, can you tell us generally what you
13 found when you did your external examination of
14 her head?

15 A. There were, I believe, 18 total injuries to
16 the external surface of her body, but not all 18
17 of them are just head. I believe that the last
18 four or five of the 18 are random bruises on her
19 legs and arms, but the majority of the injuries to
20 the head go to Number 14. So, there's 14
21 injuries, abrasions, lacerations like I've showed
22 you that number up to 14.

23 Q. And those are included within your report

1 and that's been previously marked, correct?

2 A. Correct.

3 Q. Thank you, Doctor. If we may go to the next
4 exhibit. And then as you explained after you're
5 done with an external autopsy, you do an internal
6 autopsy, correct?

7 A. Correct.

8 Q. And before we get to State's Exhibit 20,
9 describe what you do. You said you cut a V in
10 their chest. What else do you do to get to the
11 innards of someone to determine what their
12 injuries are?

13 A. How do you get to the internal?

14 Q. Yes.

15 A. Through the Y shaped incision. You open the
16 chest cavity, take off the sternum. The internal
17 organs are removed. For the head you have to
18 make, it's called an intermastoid incision. It
19 goes from ear to ear and the scalp is reflected
20 downward so that the skull is exposed and then we
21 open the skull.

22 Q. And does that allow you then to do the
23 internal autopsy?

1 A. That allows you to see the inside of the
2 skull, otherwise you would never get to the brain.

3 Q. With that I would like you to take a look at
4 State's Exhibit 20 and ask you to tell us what
5 that depicts.

6 A. You are looking at the top of the skull
7 after it's been taken off, and you'll see that
8 there's a V cut here. That's cut by us in order
9 to lift the top of the calvarium off, but what
10 you're seeing here is a depressed skull fracture
11 and that is over the left side of your temple
12 area. This is actually a pretty large depressed
13 skull fracture.

14 Q. And, Doctor, before -- I'm sorry to
15 interrupt, but explain to us what a depressed
16 skull fracture is.

17 A. I was just about to do that.

18 Q. Okay.

19 A. When you have an impact, the skull sometimes
20 gives and sometimes doesn't depending on your age,
21 et cetera. Babies have more flexible skulls than
22 adults obviously, but when there's an impact and
23 the skull doesn't give, it causes -- it can cause

1 a skull fracture and there's a certain kind of
2 fracture called a depressed fracture where the
3 whole plate is pushed in. It fractures but it is
4 also pushed in. This is actually a medical
5 emergency because these people have to get to
6 surgery very quickly because that changes the
7 intercranial pressure inside your skull and can be
8 very dangerous.

9 Q. And that's you indicated in the lower
10 portion?

11 A. This is the depressed skull fracture right
12 here, and that's on the left side in this area.

13 Q. Is there anything else significant about
14 this particular exhibit?

15 A. No. It just -- this is hemorrhage, which
16 would be the outer table of the skull where your
17 muscle is. It is called subgaleal. The galeal
18 tissue is the hemorrhage under the scalp -- tissue
19 under the scalp.

20 Q. When you say hemorrhage, what does that
21 mean?

22 A. Collection of blood.

23 Q. Next, Doctor, show you what's been marked as

1 State's Exhibit Number 21. Can you explain to us
2 the significance of that photo?

3 A. Okay. You take that bone I just showed you
4 that was sitting here, you take that off. You've
5 taken the brain out. Now you're looking at the
6 shelf, the bottom shelf of the skull where your
7 brain sits. And the depressed skull fracture I
8 just showed you would have been in this area.
9 This is her left side, but what has happened is
10 because you have an impact that came in this
11 direction from the left, it sent the forces across
12 the base of the skull, and so this is all
13 fractured right here across the base like a
14 clamshell. It is called a hinge fracture, like a
15 clamshell. You could just go like this and it
16 would open and close (indicating).

17 In addition there are fractures of this
18 orbital plate where this is -- where your eyes are
19 under here in this bony encasement and this is all
20 fractured. So, she has what we call basilar, base
21 of the skull, basilar skull fractures.

22 Q. And, finally, Doctor, I'm going to show you
23 what's been marked as State's Exhibit Number 22.

1 What does that tell you?

2 A. This is her left hand. She had an injury
3 here that had been sutured and there's bruising
4 around it. I can't tell you if that is a
5 laceration or if it is a cut wound because now the
6 edges have changed from the suturing, but it is a
7 repaired injury.

8 Q. And you indicated this is on her left hand?

9 A. Yes.

10 Q. I believe that's all the photos, Doctor, if
11 you want to take a seat. Thank you.

12 Now, you indicated that there was a
13 depressed skull fracture on the left side of
14 Ms. Navarre's skull, correct?

15 A. Correct.

16 Q. Can you explain how people in general
17 receive these types of injuries?

18 A. The hinge fracture that we talked about, the
19 clamshell, which goes across the base of the
20 skull, we routinely see this injury in high speed
21 automobile accidents when there's an acute impact
22 and the head hits the side of the driver's window
23 or door, and those forces go right across the base

1 of the skull. You have to have a lateral impact
2 for a hinge.

3 Q. And, I'm sorry, I spoke with respect to the
4 hinge fracture. Is there a general way that
5 people can receive depressed skull fractures, or
6 are they too numerous?

7 A. A depressed fracture is from any localized
8 impact.

9 Q. And it could be from any object?

10 A. It could be from any object. When I say
11 localized, I mean the majority of the pressure or
12 the force is coming in one localized area, so that
13 bone pushes in, but you can see it with many
14 different kinds of weapons, I mean. . .

15 Q. Now, with respect to the injuries sustained
16 by Brenda Navarre prior to her death, the photo
17 when the original -- or first photos showed an
18 injury to her forehead, is it evidence there was
19 an impact on her forehead as well?

20 A. If that was only a split of the scalp from
21 this impact, you wouldn't have abrasion around it.

22 Q. And abrasion means like the bruising and the
23 redness?

1 A. That dark (indicating), so this most likely
2 is a second impact.

3 MR. LOISEL: Judge, may I approach the
4 witness?

5 THE COURT: Sure.

6 Q. Doctor, I'm going to show you what has been
7 previously marked as State's Exhibit -- State's
8 Exhibits 5, 7 and 8. Could you take a look at
9 those for me, please.

10 A. Okay.

11 Q. And what do those photos depict?

12 A. It looks like a boulder, rock, a big rock.

13 Q. Now, have you ever seen that rock before?

14 A. No.

15 Q. You were just talking about the hinge
16 fracture as well as a depressed skull fracture.
17 Is it a possibility that an impact with a rock
18 such as that could cause those injuries?

19 A. Yes, but for a different mechanism.

20 Q. Tell us, please.

21 A. Remember when we just talked about the high
22 speed automobile accident, the head hitting the
23 inside of the door? Well, you would not get a

1 rock like this size at high speed, it would be
2 impossible to throw this fast, but it is the sheer
3 weight of it that does that kind of injury.

4 Q. So the injuries that you just described, are
5 they consistent with being hit by a rock such as
6 that size and nature?

7 A. It would be consistent with that, yes.

8 Q. And, Doctor, one final question, do you have
9 an opinion within a reasonable degree of medical
10 certainty as to the manner and means of
11 Brenda Navarre's death?

12 A. Yes. It's my opinion that Brenda Navarre
13 died of blunt force injuries of the head.

14 MR. LOISEL: Thank you, Doctor.

15 - - -

CROSS-EXAMINATION

17 BY MR. WINGATE:

18 Q. Good morning, Dr. Barnett.

19 A. Good morning, Mr. Wingate.

20 Q. How are you?

21 A. I'm pretty good. And you?

Q. Good to see you again. I'

23 Few questions, not many. Okay?

1 As it relates to your role as the
2 forensic pathologist, in addition to conducting
3 this examination, the forensic pathology exam,
4 internal, external, you also collect evidence; is
5 that correct?

6 A. Collect evidence from the body, if it's
7 there, yes.

8 Q. And the evidence that you collect, you will
9 then turn over to the police department or the
10 investigating agency at that time?

11 A. Yes, sir.

12 Q. All right. And in this case on the day of
13 the autopsy, you collected evidence consisting of
14 rectal and vaginal swabs? You have to answer.

15 A. I'm trying to find that page.

16 Q. Page 5.

17 A. Okay.

18 Q. Rectal and vaginal swabs, underpants, blood
19 sample; is that correct?

20 A. Correct.

21 Q. And you at that time of the autopsy gave it
22 to Detective Chad Culpert?

23 A. Yes, sir.

1 Q. And, of course, for the purposes of analysis
2 or whatever they wanted to do with it as part of
3 the investigation?

4 A. Correct. They usually request from me what
5 evidence they want collected and I collect it.

6 Q. All right. I'm going to hand you -- may I
7 see your autopsy first?

8 A. These are the State's exhibits.

9 Q. I'm handing you what's been marked for
10 identification as State's Exhibit 15.

11 A. Yes.

12 Q. And that is also a part of your report; is
13 that correct?

14 A. It is.

15 Q. And that is what?

16 A. This is actually two pages. It's both the
17 antemortem and the postmortem toxicology report.

18 Q. All right. And on that you indicate -- let
19 me see if we're on the same page. All right. On
20 the first page of that two page report it
21 indicates that autopsy findings, case history,
22 head injuries, homicide, crack cocaine addict; is
23 that correct?

1 A. Yes.

2 Q. And this was part of the findings?

3 A. This was the information that was supplied
4 to us that she -- by the hospital and by the
5 investigators, and so when I have a history of
6 drug abuse, I try and include that on the
7 toxicology report.

8 Q. One final question. Now, you indicated that
9 you did give the evidence that you had obtained to
10 a Detective Chad Culpert at the time of the
11 autopsy, correct?

12 A. I did, and he gave me a receipt for it.

13 Q. Was he present during the entire autopsy
14 from beginning to end?

15 A. Yes, because these are his pictures that
16 he's -- part of the pictures we used are his
17 pictures that he took.

18 MR. WINGATE: Okay. Nothing further.

19 THE COURT: Redirect?

20 - - -

21 REDIRECT EXAMINATION

22 BY MR. LOISEL:

23 Q. With respect to the toxicology report, I

1 believe it is State's Exhibit 15, what were your
2 findings on that particular report with respect to
3 Brenda Navarre?

4 A. The antemortem specimen, antemortem means
5 before death. The blood specimen that they
6 collected at the hospital, that one tested
7 positive for benzoylecgonine. Benzoylecgonine is
8 the primary metabolite of cocaine, which means
9 that Ms. Navarre used cocaine 24 to 36 hours
10 before her death, or before her admission I should
11 say, and then the postmortem toxicology sample
12 that I sent from my exam showed only the
13 resuscitation drug lidocaine, and by that time the
14 benzoylecgonine had already left her system.

15 Q. What does that indicate to you?

16 A. Well, you metabolize it, so after a while
17 you won't see it anymore, but when she was
18 admitted, she had used cocaine and still had the
19 metabolite in her system.

20 Q. Now, did this benzoylecgonine in any way
21 contribute to her death?

22 A. No.

23 MR. LOISEL: Thank you.

1 MR. WINGATE: I have nothing further.

2 THE COURT: Doctor, thank you very
3 much. Call your next witness.

4 MR. LOISEL: Thank you, Judge. At this
5 time the State calls Detective Bart Beavers.

THE COURT: Call Detective Beavers.

7 - - -

8 DETECTIVE ROBERT BEAVERS,
9 being first duly sworn by the Court, testified as
0 follows:

11 THE COURT: Please give us your name
12 and spelling of your name.

13 THE WITNESS: My first name is Bart,
14 B-A-R-T. Last name is Beavers, B-E-A-V-E-R-S.

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MR. LOISEL:

18 Q. Good morning, Detective.

19 A. Good morning, sir.

20 Q. Where do you work, Detective?

21 A. I'm employed by the City of Toledo. I'm a
22 Toledo Police Officer. I am a detective currently
23 with the Cold Case Unit. I have 25 years of

1 experience. Actually in about five days it will
2 be 25 full years. I worked initially for the
3 first two or three years on the street and then I
4 was assigned to the Vice Metro Unit for
5 approximately eight years and then after that
6 point I had been assigned to the investigative
7 services or the adult investigations unit working
8 crimes against persons, crimes against property,
9 from theft cases to sexual assault cases, homicide
10 cases. I spent three years over at joint
11 terrorism task force, working computer crimes
12 unit, and most recently probably March of 2006
13 I've been with the cold case homicide unit.

14 Q. Now, Detective, with respect to, I've asked
15 every police officer, what is your educational
16 background before you joined the police
17 department?

18 A. Well, I have a high school diploma and I'm
19 about 20 hours short of my bachelor's degree at
20 Lourdes College.

21 Q. And before you went to join the police
22 force, did you go to the academy?

23 A. I did. I went through roughly a six month

1 training process through the Toledo Police
2 Academy.

3 Q. And you indicated that you've had a number
4 of positions during your tenure at the Toledo
5 Police Department. Currently where are you
6 assigned?

7 A. Currently assigned to the Cold Case Homicide
8 Unit. There are three of us assigned.
9 Sergeant Forrester is the supervisor of the unit,
10 I'm the lone Toledo Police detective, and then
11 there's also an investigator that works for the
12 Lucas County Prosecutor's Office that is a retired
13 Toledo Police detective and that would be
14 Investigator Tom Ross.

15 Q. And you worked on this case involving the
16 homicide of Brenda Navarre, correct?

17 A. Yes, I did.

18 Q. Can you explain to us when you began your
19 involvement with this particular case?

20 A. My involvement, as I previously stated, it
21 was about March of 2006 when I joined the unit and
22 it was -- I had come from working a different
23 shift in the Detective Bureau and I was asked by

1 Sergeant Forrester to go with him to interview
2 Janet Wilson regarding a case that they had
3 previously looked at and that would have been
4 summer of 2006, July, August roughly.

5 Q. And did you have an opportunity to talk to
6 Mrs. Wilson?

7 A. I did, yes.

8 Q. Was it the same Mrs. Wilson that testified
9 yesterday?

10 A. That is correct.

11 Q. Did you talk to her?

12 A. I did. Sergeant Forrester and I had
13 probably a half hour, 45 minute conversation with
14 her.

15 Q. Do you recall where that took place?

16 A. That would have been her residence on South
17 Street right near South and Reynolds.

18 Q. And this was the first contact you had with
19 this case?

20 A. First contact I had, yes.

21 Q. And with respect to this particular case,
22 obviously you're a member of the Cold Case Unit.
23 Common sense would tell us that it is a cold case,

1 correct?

2 A. That is correct.

3 Q. Do you know when this case or when the
4 homicide occurred?

5 A. That would have been December 1st. The
6 actual offense occurred December 1st of 1993, and
7 then she passed about a day later.

8 Q. And were you a part of that original
9 investigation?

10 A. I was not.

11 Q. Do you recall where you were working in
12 December of 1993?

13 A. I do. I was working -- in December of '93 I
14 would have probably just left the Vice Unit and I
15 was in some -- in a training course and working
16 the crime analysis unit just before going to the
17 Detective Bureau. So I worked 1985 to '93 in the
18 Vice Metro Unit.

19 Q. You were in the Vice Metro Unit. You
20 obviously heard the testimony of
21 Detective Seymour, right?

22 A. I did, yes.

23 Q. He was familiar with Brenda Navarre. Were

1 you familiar with Brenda Navarre in the Vice Unit?

2 A. I was not. I was -- I worked the day shift
3 liquor and enforcement, anything that would happen
4 during the day shift hours, not drug
5 investigations at that time.

6 Q. So you became involved in approximately you
7 said May of 2006?

8 A. It would have been the summer of 2006, July,
9 August, in that time frame.

10 Q. And did you have an opportunity when you
11 became involved in this case to look at prior
12 police reports involving the homicide of
13 Brenda Navarre?

14 A. I did. We have in the Cold Case Unit, we
15 look at a lot of old cases. We have almost 300
16 going back into the 1970's. So, we will take the
17 case, look at the paperwork, the reports that were
18 done, look at the evidence that we have just to
19 get a feel because we weren't around in 1993 to
20 conduct the investigation. So, we have to see how
21 the investigation progressed and just generally
22 learn about the facts of the case.

23 Q. And did you do that with respect to this

1 case?

2 A. I did, yes.

3 Q. And were you able to look at old reports
4 involving this particular case?

5 A. Yes, I did.

6 Q. With regard to those reports, to your
7 knowledge were there any suspects back in 1993
8 with respect to this murder?

9 A. There were a number of tips that came in in
10 1993, Crime Stopper tips, tips that they would
11 call the office and have -- you know -- be written
12 down on a piece of paper and passed on to the
13 investigator that got placed into the file. So,
14 yes, there were several names and information that
15 was received by the police department and the
16 original investigators at that time.

17 Q. And after you had a chance to review that
18 file, did anything pan out with respect to any of
19 those tips back in 1993?

20 A. They did not.

21 Q. In fact, do you recall when this case was
22 indicted?

23 A. This case was indicted October of 2006, I

1 believe.

2 Q. Now, you indicated that you talked to
3 Brenda Navarre the summer of 2006. Explain --

4 MR. WINGATE: Objection.

5 Q. I'm sorry. I apologize. You talked to
6 Janet Wilson --

7 A. Yes.

8 Q. -- not Brenda Navarre -- I'm sorry. I
9 apologize -- in the summer of 2006.

10 What else did you do with respect to the
11 investigation leading up to the indictment in this
12 particular case?

13 A. Well, we -- obviously I took a look at the
14 case file. We had other interviews with
15 Janet Wilson with respect to this case. We talked
16 to her sons, Alfonzo and -- Alfonzo Davis, Lamont
17 Fonseca. I believe I talked to Lamont prior to --
18 I definitely talked to Alfonzo at that time and we
19 just -- I continued to look for evidence, look for
20 -- you know -- and conduct those interviews.

21 Q. Now, with respect to looking for evidence,
22 was there any evidence from the original
23 investigation available to you in 2006?

1 A. Unfortunately, no. When we went down to the
2 property room where this evidence is maintained,
3 the evidence that was originally taken in by
4 detectives, including that large 110 pound rock
5 had been destroyed and it was destroyed in
6 February of 2006.

7 So, when I went down or Sergeant
8 Forrester went down to look to see if there was
9 any physical evidence stored in the property room,
10 there was no indication. That evidence had been
11 destroyed, so. . .

12 Q. Did you investigate as to why it had been
13 destroyed?

14 A. I did.

15 Q. And what did you find out?

16 A. Well, the case was originally listed as a
17 felonious assault. Typically if somebody -- if
18 this is ruled a homicide in a relatively short
19 period of time, the placard or the information
20 that's contained on the evidence tags as well as
21 the log that the property room carries is going to
22 be listed as a homicide or a murder. In this
23 case, the placard that was on the evidence that

1 was on the property room log indicated that it was
2 a felonious assault.

3 So, the individual who went down to the
4 property -- or originally handled the evidence
5 from evidentiary standpoint was the one that
6 actually destroyed the evidence, mistakenly
7 thinking it was a felonious assault and not a
8 homicide.

9 MR. WINGATE: I will object as to what
10 he thought.

11 THE COURT: Sustained.

12 Q. Nonetheless this evidence was no longer
13 available for any testing or anything of that
14 nature?

15 A. No, no longer available.

16 Q. Now, you indicated that you talked to
17 Janet Wilson. Do you recall approximately how
18 many times you talked to Janet Wilson?

19 A. Personally, you know, I probably talked to
20 her seven or eight times regarding the case, and
21 matters specific to the case probably three or
22 four times.

23 Q. And with respect to those conversations that

1 you had with her pertaining to the case, were her
2 statements to you consistent?

3 MR. WINGATE: Your Honor, I'm going to
4 object. May we approach?

5 THE COURT: Sure.

6 (WHEREUPON THE FOLLOWING DISCUSSION WAS
7 HELD AT THE BENCH.)

8 MR. WINGATE: First of all, we don't
9 know what the statements were. I think at this
10 juncture he's calling upon this officer to
11 substitute the opinion of the -- or from the
12 jurors function by testing the credibility of a
13 witness as far as asking whether or not these
14 statements were consistent. We don't have --
15 have never seen the statements. We don't know
16 what they are, so I don't know how he could
17 attest to statements being consistent when he's
18 basically substituting his opinion for the role
19 of the juror. These are statements that no one
20 else has heard, no one else will probably here in
21 this case, so I think it is improper and it is
22 misleading at this point.

23 MR. LOISEL: Judge, I'm not trying to

1 substitute anything. He testified that he talked
2 to a witness in the case three or four times
3 pertaining to the facts surrounding the case.

4 I'm just asking him if those conversation were
5 consistent. I'm not asking him to get into any
6 of the facts or surrounding those. Mr. Wingate
7 can obviously cross him with respect to those
8 conversations, if he so desires.

9 THE COURT: Objection is overruled.

10 MR. WINGATE: I don't know what the
11 conversations were.

12 (WHEREUPON THE PRECEDING DISCUSSION AT
13 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
14 WERE HELD.)

15 THE COURT: Overruled.

16 Q. My question again with respect to the three
17 or four conversations that you had with
18 Janet Wilson pertaining to what happened back in
19 1993, were her statements to you consistent?

20 A. Yes.

21 Q. And you obviously heard her testimony here
22 in court, correct?

23 A. Yes.

1 Q. Was her testimony consistent with what she
2 told you during those three or four conversations?

3 A. Yes.

4 Q. At some point, Detective, did you become
5 aware that there had been anal and vaginal swabs
6 taken as just was referred to by the coroner?

7 A. Yes, I did.

8 Q. And when -- describe to us how you came to
9 find that information out.

10 A. The regional crime lab that's housed in the
11 Toledo Police Department is somewhat of a separate
12 entity from the property room. The regional crime
13 lab had a freezer down in the basement area that
14 they had stored biological evidence, if you will,
15 from various cases in that particular freezer.
16 There was an audit that was conducted of that that
17 we had -- that I had no idea that this particular
18 evidence had existed.

19 So, once I took a look at this audit, I
20 took a look at my active cases, and with this case
21 being one of them, I noticed that there was an
22 entry for a vaginal swab and anal swab and some
23 blood standards.

1 So, I went down to that freezer to take a
2 look and see if, in fact, that was -- they don't
3 log these -- they don't log that, at least they
4 didn't at this time but that's changed at this
5 time. They didn't log it in the property room or
6 show up on the property room printout because the
7 lab was separate.

8 So, I went down to look to see what the
9 disposition of that evidence was and it was not in
10 the freezer. So, I checked with the crime lab and
11 I found out that those particular items of
12 evidence were signed out by my supervisor in 2005
13 for this -- he had signed it out and placed it
14 into a locked area. So, further investigation
15 located those swabs as well as the blood
16 standards.

17 Q. And upon discovery and you finding these
18 swabs and samples, what did you do at that point?

19 A. Immediately contacted the Court and sent
20 those standards -- or request for analysis down to
21 BCI&I, their lab in Bowling Green, to have those
22 analyzed.

23 Q. And to your knowledge, were those samples

1 tested and analyzed?

2 A. They sent them on to North Carolina. North
3 Carolina conducted a DNA analysis of those
4 standards. Yes, they were analyzed.

5 Q. And with respect to the vaginal swabs, do
6 you know if it matched the standards sent to them
7 of the Defendant?

8 A. They did not. The vaginal swabs indicated
9 the presence of an unknown male DNA and it was not
10 Robert Wilson.

11 MR. LOISEL: Juge, may I approach?

12 THE COURT: Sure.

13 Q. Now, Detective, I'm going to hand you what's
14 been marked as State's Exhibit 24 and 25. I
15 believe there is a stipulation as to their
16 authenticity with respect to what these are.

17 Can you just look at them? First,
18 Exhibit 24, without telling us what's contained in
19 that report, do you know what that is?

20 A. It is a certificate of analysis supplied to
21 me from LabCorp. Actually it was supplied to
22 BCI&I and it was forwarded to me, a copy was
23 forwarded to me regarding the analysis of the

1 swabs and standards that we submitted.

2 Q. And when you say LabCorp, is that the lab in
3 North Carolina that you were previously referring
4 to?

5 A. Yes, that's correct.

6 Q. And if you could, what is State's Exhibit
7 25?

8 A. State's Exhibit 25 is a report from BCI that
9 indicates that the evidence was submitted, and I'm
10 referring evidence as to the rectal, vaginal, and
11 DNA standards of the victim and Mr. Wilson and
12 taken by our lab personnel on February 6th, 2008.

13 Q. As I said, you've obviously been here for
14 the testimony, are you aware of any Crime Stopper
15 money that was given in this particular case?

16 A. Yes, I am.

17 Q. And do you know when that money was issued
18 and to who it was issued to?

19 A. The money was issued October of 2006 and the
20 money was issued to Janet Wilson.

21 Q. And with respect to Crime Stopper in
22 general, when is money given to individuals, or
23 for what reason? I'm sorry.

1 A. Money is given to individuals for providing
2 information that leads to the arrest of somebody
3 that committed the crime.

4 Q. And do you know how much was given and to
5 whom?

6 A. \$5,000 dollars was given to Janet Wilson.

7 Q. And now you indicated also that you had some
8 conversations with I believe Lamont Fonseca and
9 Alfonzo Davis; is that correct?

10 A. Yes.

11 Q. And who is Lamont Fonseca?

12 A. Lamont Fonseca is Janet Wilson's son.

13 Q. And you were here for Alfonzo Davis's
14 testimony, correct?

15 A. I was.

16 Q. And was his testimony consistent with the
17 conversation that you had previously had with him?

18 MR. WINGATE: Again, we're going to
19 object.

20 THE COURT: I'm going to allow it.

21 A. Yes.

22 MR. LOISEL: Thank you, Detective.

23 Nothing further.

1 THE COURT: Cross -- let me stop you
2 here. Does the jury want to take a break, 15
3 minute break? Okay. Let's -- before we get to
4 the cross-examination, let's take a 15 minute
5 recess. Members of the jury, do not talk to
6 anyone about the case and do not form or express
7 an opinion about the case. Court is in recess.

8 (RECESS TAKEN.)

9 CROSS-EXAMINATION

10 BY MR. WINGATE:

11 Q. Good morning, Detective Beavers.

12 A. Good morning, Mr. Wingate.

13 Q. You became involved in this case summer June
14 or July of 2006?

15 A. That is correct.

16 Q. As part of the cold case file; is that
17 correct?

18 A. Yes, as a result of my assignment to the
19 Cold Case Unit, yes.

20 Q. And I think you indicated that you,
21 Detective Forrester and Tom Ross?

22 A. Yes.

23 Q. That would be the retired detective who

1 works with the Prosecutor's Office?

2 A. Yes.

3 Q. Comprised this Cold Case Unit?

4 A. Yes.

5 Q. All right. And Detective Forrester is also
6 in charge of the Crime Stopper program?

7 A. Yes, it is actually sergeant. He is my boss
8 and part of his duties include Crime Stopper
9 program.

10 Q. And he was serving in that capacity at that
11 time?

12 A. He was, yes.

13 Q. And he was the one that authorized \$5,000
14 dollars be paid to Janet Wilson?

15 A. Actually the Crime Stopper board authorizes
16 the money to be paid.

17 Q. And you heard Janet Wilson say that he was
18 told -- that she was told I can give you 50 crisp
19 \$100 dollar bills by Detective Forrester; do you
20 recall that?

21 A. Yes.

22 Q. And that's what she was paid, wasn't she?

23 A. That is correct.

1 Q. Now, in your involvement in this case you
2 indicated that you had an opportunity to look at
3 police reports to see how the investigation
4 progressed. You looked at that report, you went
5 over the Crime Stopper reports relative as to your
6 participant as investigator in this homicide of
7 Brenda Navarre; is that correct?

8 A. Yes, that is correct.

9 Q. And in that -- and the Crime Stopper reports
10 came in over a period of two or three years after
11 the homicide in '93?

12 A. Well, the majority of them came in, you
13 know, within a close proximity date wise of when
14 the homicide occurred, but they continued to
15 trickle in, yes.

16 Q. And inasmuch as the majority of them came in
17 within a short period of time of the homicide, you
18 received a description of the suspect being 6'1,
19 6'2, didn't you?

20 MR. LOISEL: Objection, Your Honor,
21 hearsay.

22 Q. I'll ask the question a different way. In
23 the review of your reports, did you come across a

1 description of the individual as being 6'1 or 6'2?

2 A. There were varying reports, some of which
3 said 6'1, 6'2.

4 Q. Did any ever say anything under six feet?

5 MR. LOISEL: Objection, Your Honor, it
6 is hearsay.

7 MR. WINGATE: I'll rephrase the
8 question.

9 Q. Did you come across anything in your reports
10 indicating less than six feet tall?

11 MR. LOISEL: Objection, hearsay.

12 THE COURT: I'm going to allow it.

13 A. I would have to review the reports, but I --
14 each individual Crime Stopper I don't know what
15 the descriptions were. There were some that said
16 six foot, 6'1. If there were any less, I don't
17 recall.

18 Q. Let me just ask this --

19 A. Okay.

20 Q. -- set aside the Crime Stopper reports for
21 right now. Talking about the police reports you
22 reviewed. Did you get any police report -- did
23 you review any police report wherein you had a

1 description of this individual, this suspect being
2 less than 6'1?

3 MR. LOISEL: Objection, Your Honor. It
4 is hearsay. He's trying to get to the truth of
5 the matter asserted as someone else stated.

6 THE COURT: This is part of his
7 investigation and part of his protocol in the
8 investigation. I think it is appropriate,
9 overruled.

10 A. Yes, the initial reports listed 6'1, six
11 foot, 6'1.

12 Q. Now, I understand that. But this is my
13 question: Did you ever get anything indicating
14 less than 6'1, 6'2? That's what I'm asking.

15 A. Yes.

16 Q. All right. You got reports saying how tall
17 was the individual?

18 A. Saying -- I'm sorry. I don't understand the
19 question.

20 Q. I guess what I'm asking you is this: Do you
21 have any police reports -- did you review as part
22 of your protocol any of the police reports which
23 indicated that the suspect was less than 6'1 or

1 6'2?

2 A. Yes.

3 Q. All right. And what was the height?

4 A. The height would have been, once we received
5 the information from Janet Wilson in 2003 and I
6 was reviewing those reports, those were less than
7 six.

8 MR. LOISEL: Judge, if he could finish
9 the answer to the question.

10 Q. Okay. Now -- okay. You want to talk about
11 Janet Wilson. You're talking about -- what
12 reports are you talking about relative to
13 Janet Wilson?

14 A. When Janet Wilson came to the police and
15 stated that Robert --

16 Q. Hold on.

17 A. I'm sorry.

18 Q. Thank you very much. Gave a statement.

19 A. When Janet Wilson gave a statement and
20 Robert Wilson was listed as a suspect at that
21 time, the reports that show when you run
22 through -- when you look at an individual and
23 there are that individual's height/weight

1 characteristics are known to be less than six
2 foot, 6'1.

3 Q. Well, let me just ask this. Okay?

4 A. Okay.

5 Q. Now, let's talk about before you talk to
6 Janet Wilson was 2006, right?

7 A. That's when I talked to Janet Wilson, yes.

8 Q. All right. Now, what I'm asking you about
9 was the Crime Stopper reports and the police
10 reports prior to Janet Wilson, because we're going
11 to get to Janet Wilson.

12 A. Okay.

13 Q. And your answer is there were no reports
14 indicating that the suspect was less than 6'1 or
15 6'2; is that correct?

16 A. Prior to 2003, yes.

17 Q. Right. Prior to 2003. And that would have
18 been with Janet Wilson, and those reports came
19 from people who actually saw the assailant, didn't
20 it?

21 A. They came from the original people that were
22 at the original scene, yes.

23 Q. People who saw the assault?

1 MR. LOISEL: Objection, Your Honor.

2 This is hearsay. He's getting into statements of
3 other individuals.

4 THE COURT: I'm going to sustain that.

5 That assumes facts not in evidence.

6 Q. Did you review a report of an alleged
7 eyewitness indicating the height of the
8 individual, 6'1, 6'2?

9 A. Yes.

10 Q. Okay. You talked to Odett Scott --

11 A. I did, yes.

12 Q. -- correct?

13 You talked to Lisa Mays who was with her
14 also, correct?

15 A. I did not know.

16 Q. You reviewed a report of Lisa Mays who was
17 with Odett Scott; is that correct?

18 A. Yes, that's correct.

19 Q. All right. Let's just talk about
20 Mrs. Wilson. You say you generally had seven,
21 eight conversations with her; is that correct?

22 A. Approximately, yes.

23 Q. And you had three or four whereby you talk

1 about a statement; is that correct?

2 A. Either a full statement or portions thereof,
3 yes.

4 Q. Okay. And let me just say this, let's just
5 lead up to that. All right?

6 Janet Wilson would tell you something and
7 say I'm not going to cooperate; is that correct?
8 She would go back and forth?

9 MR. LOISEL: Objection, Your Honor,
10 hearsay.

11 MR. WINGATE: She testified.

12 MR. LOISEL: He's asking about
13 out-of-court statements and the truth of their
14 matter asserted.

15 MR. WINGATE: Your Honor, Mrs. Wilson
16 testified as to her relationship with the police,
17 Your Honor.

18 THE COURT: I'm going to allow some
19 leeway here.

20 MR. WINGATE: All right.

21 Q. She would vacillate on whether she was going
22 to cooperate, was not going to cooperate; is that
23 correct?

1 A. Yes.

2 Q. All right. Say she was -- say she's not
3 going to do it; is that correct?

4 A. Yes.

5 Q. As a matter of fact, she indicated at one
6 point I'm not testifying, didn't she?

7 A. Yes.

8 Q. And she was arrested and charged with
9 obstructing justice; is that correct?

10 A. That's correct, yes, sir.

11 Q. All right. And prior to that, prior to that
12 day that she was arrested, Mrs. Wilson had
13 contacted the Court complaining about Toledo
14 Police and you were ordered to have no contact
15 with her; is that correct?

16 MR. LOISEL: Objection, Your Honor.

17 Objection, Your Honor.

18 THE COURT: Wait a minute. Can I see
19 Counsel up here?

20 (WHEREUPON THE FOLLOWING DISCUSSION WAS
21 HELD AT THE BENCH.)

22 THE COURT: First of all, what's your
23 objection.

1 MR. LOISEL: Judge, first of all it is
2 irrelevant. Second of all, it is hearsay. He's
3 trying to get in information through this witness
4 of what Janet Wilson did or didn't do in
5 contacting the Court. That's hearsay as to what
6 Janet Wilson did or did not say or talked to the
7 Court.

8 MR. MCELROY: What she did is not
9 hearsay, Judge.

10 THE COURT: That's what I understand.
11 The conduct is not hearsay.

12 MR. LOISEL: He's asking her did she
13 contact the Court complaining about Toledo Police
14 Officers harassing her. That goes directly as to
15 what her statement is and truth of the matter
16 asserted, out-of-court statement.

17 MR. MCELROY: It is not offered for
18 truth. It is matter for impact.

19 THE COURT: I'm going to overrule your
20 objection. I'm going to advise Mr. Wingate, you
21 may be opening some doors here. You should be
22 careful.

23 MR. WINGATE: Okay. I intend to, Your

1 Honor.

2 THE COURT: All right.

3 (WHEREUPON THE PRECEDING DISCUSSION AT
4 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
5 WERE HELD.)

6 BY MR. WINGATE:

7 Q. Did you hear my question?

8 A. No. I'm just waiting for your question.

9 Q. All right. I thought -- my question is
10 simply this: As a result of a phone call by
11 Janet Wilson, Toledo Police were ordered to have
12 no contact with Janet Wilson; is that correct?

13 A. I don't think that was the verbiage that was
14 used in the order.

15 Q. All right. Let's change the verbiage a
16 little bit.

17 Toledo Police ordered not to have any
18 contact with Janet Wilson, nor Defense Counsel?

19 A. Yes.

20 Q. Both of us, both sides ordered to have no
21 contact with Janet Wilson, correct --

22 A. Yes.

23 Q. -- as a result of police -- her phone call

1 complaining about police officers, correct?

2 A. I don't know if that was as a result of
3 that.

4 Q. I understand that. And the same day that
5 you -- that that order was issued to have no
6 contact with her, Janet Wilson was arrested?

7 A. She was arrested that afternoon, yes.

8 Q. After she left the courthouse and went to
9 work?

10 A. That is correct, sir.

11 Q. Now, as it relates to your investigation,
12 and you did tell the Prosecutor that you know it
13 was an going investigation and the investigation
14 continued. Did you come across a report prior to
15 Janet Wilson indicating that a possible eyewitness
16 recognized the voice of the assailant?

17 MR. LOISEL: Objection, Your Honor.

18 Hearsay.

19 THE COURT: This is cross-examination.
20 I'm going to allow it.

21 A. Yes.

22 Q. What follow up was done relative to that?

23 A. It was -- again, at that time it wasn't my

1 case.

2 Q. All right. But you've subsequently looked
3 over the file and I think you indicated that you
4 saw how the -- saw how the investigation
5 progressed; isn't that what you told the
6 Prosecutor?

7 A. Yes.

8 Q. All right. So, as it relates to a potential
9 witness recognizing the voice of the assailant of
10 Mrs. Navarre, was there any indication that that
11 was followed up on?

12 A. No, sir.

13 Q. As a matter of fact, there was a name given
14 to that voice?

15 MR. LOISEL: Objection, Your Honor.

16 May we approach?

17 MR. WINGATE: I'll rephrase the
18 question. Let me rephrase it.

19 THE COURT: All right.

20 Q. Did the reports that you reviewed, and I'm
21 not asking the name, the reports that you reviewed
22 relative to recognizing the voice also indicate a
23 name?

1 A. Yes, it did.

2 Q. All right. It wasn't Robert Wilson, was it?

3 A. It was not.

4 Q. And no follow up on that investigation?

5 A. I can't say there was no follow up done.

6 There was no report that indicated that there was
7 follow up.

8 Q. All right. As it relates to that night, did
9 you review or report indicating that a van had
10 been stopped, a suspect van had been stopped?

11 MR. LOISEL: Objection, Your Honor.

12 THE COURT: If this witness knows, he
13 can testify.

14 Q. Did you review a report?

15 A. Was there a report that indicated that?

16 Yes.

17 Q. All right. And within that van, bloody
18 sweater was located. Did you run across a report
19 indicating that?

20 A. Yes.

21 Q. Same report, isn't it?

22 A. Yes, sir.

23 Q. As a result of you seeing how the

1 investigation progressed, was there any follow up
2 on that?

3 A. The bloody sweater was submitted to the lab
4 for analysis.

5 Q. And do you have an analysis?

6 A. We do not.

7 Q. Do you know if Mrs. Navarre was wearing a
8 sweater that night?

9 A. I don't know.

10 Q. And because of there being no analysis, you
11 cannot say whether this was or was not her sweater
12 or was or was not evidence of that incident; is
13 that correct?

14 A. I could not say that, yes.

15 Q. Now, in your investigation or your
16 involvement in this case, did you come across a
17 report and specifically the one involving
18 Roger Craig who testified here?

19 A. Uh-huh.

20 Q. And it indicated felonious assault charge,
21 and detectives on the scene, and evidence
22 technician on the scene, Cashen, Koury, Sergeant
23 Dunham and Culpert. Did you come across that

1 report?

2 A. Yes.

3 Q. All right. So that report will indicate
4 that Mr. Culpert was there -- or
5 Detective Culpert, Chad Culpert was there at the
6 scene when the body was located, correct?

7 A. Yes.

8 Q. Similar to the first?

9 A. Well, I think the body was already at the
10 hospital but he was at the scene.

11 Q. And it was called a felonious assault at
12 that time; is that correct?

13 A. It was, yes.

14 Q. All right. And you heard the testimony
15 of -- I'm sorry -- Dr. Barnett indicating the
16 evidence that she took from the body of
17 Brenda Navarre was given to Chad Culpert. You
18 heard that testimony?

19 A. Yes, sir.

20 Q. That is the same Chad Culpert that was at
21 the scene, felonious assault?

22 A. Yes, sir.

23 Q. All right. And inasmuch as he's there and

1 you saw the photographs where the skull, the scalp
2 was pulled back, the skull is open, the brain
3 removed, would it be fair to say that Mrs. Navarre
4 was now a homicide, not a felonious assault?

5 A. At what point? I'm sorry.

6 Q. At the point he's getting the evidence from
7 the autopsy.

8 A. No, sir -- oh, from the autopsy?

9 Q. Yes.

10 A. Yeah, that would be correct, yeah.

11 Q. And that would be on December the 2nd, 1993?

12 A. I believe so, yes, sir.

13 Q. The date of the autopsy?

14 A. Uh-huh.

15 Q. And the Chad Culpert at the scene taking
16 photographs, felonious assault, the Chad Culpert
17 that received the evidence from Dr. Barnett at the
18 autopsy is the same Chad Culpert that ordered the
19 destruction of the evidence; is that correct?

20 A. Yes, that's correct.

21 Q. And as far as Mr. Wilson is concerned, there
22 could have been fiber evidence or trace evidence
23 on the clothes, on the boulder which could have

1 shown whether he did or did not have anything to
2 do with this offense; is that correct?

3 A. Yes, sir, could have been evidence on the
4 boulder and clothing.

5 Q. And that's gone?

6 A. Yes, that is gone.

7 Q. But by the same token, from the State's
8 points of view evidence which could corroborate or
9 indicate that he may have had something to do with
10 this is gone; is that correct?

11 A. That is correct.

12 Q. And would it be fair to say that when you
13 started receiving -- I'm sorry -- the Crime
14 Stopper reports that you received indicated
15 potential suspect dropped a rock on her head. Did
16 you come across Crime Stopper reports that said
17 that?

18 A. Some did, yeah.

19 Q. And this would have been prior to 2003 when
20 you talked to Janet Wilson; is that correct?

21 A. Yes.

22 Q. And when Janet said that she had heard on
23 the streets what had happened to Janet Wilson,

1 that would be -- I'm sorry -- when she --

2 When Janet Wilson testified that she had

3 heard on the streets what had happened to

4 Brenda Navarre, that would be consistent with the

5 Crime Stopper reports that you reviewed prior to

6 talking to Janet Wilson; is that correct?

7 A. It is a long question.

8 Q. Well, you want me to rephrase it?

9 A. Okay.

10 Q. Okay. Janet Wilson said -- made a statement
11 to you; is that correct?

12 A. Yes.

13 Q. All right. And you said she testified
14 consistent; is that correct?

15 A. Yes, sir.

16 Q. You got Crime Stopper reports saying that a
17 rock was dropped on her head; is that correct --

18 A. That's correct.

19 Q. -- prior to you talking to Mrs. Wilson, the
20 dates on these Crime Stopper reports?

21 A. Yes, that's correct.

22 Q. All right. And all I'm saying is her saying
23 to you that she had heard in the streets what had

1 happened to Brenda Navarre, that would be
2 consistent with the Crime Stopper reports that you
3 received prior to talking to her indicating what
4 had happened to Janet -- to Brenda Navarre,
5 correct?

6 A. With respect to a rock being dropped on her
7 head, yes.

8 Q. Okay. And let me just ask this: In one
9 of -- did you come across a Crime Stopper report
10 which -- let me rephrase that.

11 Did you review Crime Stopper reports more
12 than one implicating at least one individual?

13 A. Yes.

14 Q. It wasn't Robert, was it?

15 A. That's correct.

16 Q. Was there follow up on that?

17 A. Yes.

18 Q. And what follow up was done?

19 A. There was follow up at the time that -- at
20 least in one of the instances that facts that were
21 portrayed weren't consistent with what had
22 occurred, but there was follow up also done by
23 myself and Investigator Ross where we interviewed

1 that individual and an individual that was
2 supposedly with him that day.

3 Q. And you're talking specifically about
4 Scottie Burrell?

5 A. Scottie Burrell, yes, sir.

6 Q. What about Andre Munn?

7 A. I'm not aware of that.

8 Q. Aware of follow up?

9 A. The follow-up, no. I'm not saying that
10 there wasn't any done, but I'm not -- I didn't do
11 the follow-up on Andre Munn.

12 Q. Right. And --

13 MR. LOISEL: Objection, Your Honor.

14 May I see what he's handing the witness?

15 THE COURT: Sure.

16 Q. And I've marked it up, but I'm handing you
17 Crime Stopper report, see if that was one of the
18 reports that you reviewed. And I'll refer you to
19 the second page.

20 A. Yes, I'm familiar with all of the pages.

21 Q. All right. And so would you agree with me
22 that you had one Crime Stopper report of a
23 particular individual that his name had come up on

several occasions; is that correct?

2 A. Yes.

3 Q. All right. What investigation was done
4 relative to that individual --

5 A. Well.

6 Q. -- if you know?

7 A. Well, the -- again, the reports that I
8 reviewed may not be indicative of the
9 investigation that was done and could be testified
0 to by others that completed that investigation.

11 Q. All right.

12 A. Okay.

13 Q. So, then, in other words, if that was the
14 perpetrator of the crime, to the best of your
15 knowledge, no investigation has incurred or any
16 follow up occurred based upon what you have?

17 A. The reports -- based on the reports.

18 MR. LOISEL: Objection, Your Honor.

19 This calls for speculation.

20 THE COURT: I'm going to sustain that.
21 That's too far.

22 MR. WINGATE: All right.

23 O. Are you aware of any follow up based upon

1 that Crime Stopper report of that particular
2 individual?

3 A. Solely based on the reports, no.

4 Q. Okay. Now, as it relates to -- and as you
5 reviewed the Crime Stopper reports itself,
6 information may come in and the information is
7 graded on a scale of 1 to 10; is that correct?

8 A. The value of the information is graded on a
9 scale of 1 to 10.

10 Q. Thank you. And, again, it's scaled on how
11 helpful the information may or may not be to the
12 investigation; is that correct?

13 A. Well, that --

14 MR. LOISEL: Objection, Your Honor. If
15 I may see what he's referring to. Judge, can we
16 approach?

17 THE COURT: Sure.

18 (WHEREUPON THE FOLLOWING DISCUSSION WAS
19 HELD AT THE BENCH.)

20 MR. LOISEL: Judge, renew my objection
21 with respect to hearsay. This essentially is
22 double hearsay. He's handing him reports of
23 another officer who is relating information from

1 a third individual. He can ask him if he's
2 familiar with these reports and what they say,
3 but he hands them to him. He's asking him to
4 look at double hearsay. It is not his report.
5 If he wants to call the officer who authored
6 these reports, that is the proper way to get the
7 information not through a third party.

8 MR. WINGATE: I'm not trying to get the
9 information in. I'm trying to find out about the
10 grading of information that's provided. He's
11 indicating he looked over it and I'm asking him
12 specifically the phrase says, On the below scale,
13 how helpful was this Crime Stopper information to
14 the investigation. I'm asking about not how
15 helpful it was, but is he aware of the scale, the
16 grading scale of the information that's --

17 THE COURT: You've already established
18 that information. That's sustained.

19 MR. WINGATE: All right.

20 (WHEREUPON THE PRECEDING DISCUSSION AT
21 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
22 WERE HELD.)

23 THE COURT: Sustained.

1 Q. Now, you testified that the information that
2 comes in is graded on a scale as to how helpful it
3 may be to the investigation?

4 MR. LOISEL: Objection, Your Honor. It
5 is asked and answered.

6 MR. WINGATE: This is a preparatory
7 question.

8 THE COURT: Overruled.

9 A. Based on the -- yes, based on the value of
10 the information received.

11 Q. Did you come across in your investigation
12 any information that was rated at least a five on
13 a scale of one to ten?

14 A. Possibly. I haven't I'm not familiar with
15 that specific Crime Stopper.

16 Q. There was some you didn't review?

17 A. I reviewed them but there were several Crime
18 Stoppers, I can't remember all of them.

19 Q. Okay. I understand. Would you or did you
20 consider follow up on information that was rated
21 five or above helpful?

22 A. Without seeing the specific Crime Stopper, I
23 can't say.

1 Q. I'm going to hand you what's been marked as
2 State's Exhibit -- I'm sorry -- Crime Stopper
3 report.

4 MR. LOISEL: Objection, Your Honor,
5 this is hearsay. It goes directly to the issue.

6 THE COURT: I'm going to sustain it.
7 This is hearsay on hearsay.

8 MR. WINGATE: Your Honor, may we
9 approach? That is not what it is being offered
10 for.

11 THE COURT: I'm going to sustained the
12 objection. He can testify to the grading system
13 and that's as far as you can go.

14 MR. WINGATE: That's all I'm asking.

15 THE COURT: You've already established
16 that.

17 MR. WINGATE: All right.

18 Q. Now, as far as a grading system or five of
19 five or above, do you know if any of the Crime
20 Stopper reports that had a grading of five or
21 above were followed up on?

22 MR. LOISEL: Objection, Your Honor. It
23 has been asked and answered.

1 THE COURT: If the witness knows, he
2 can answer. If he doesn't, he doesn't.

3 A. I don't know.

4 Q. You don't know?

5 A. No.

6 Q. All right. So then when you say that you
7 looked at prior police reports, Crime Stopper
8 reports to see how the investigation progressed,
9 five or above, you don't know what happened with
10 those?

11 A. That's correct.

12 Q. And that's a pretty strong rating on a scale
13 of five to ten, isn't it -- on one to ten? I'm
14 sorry.

15 A. Again, it is determined on the individual
16 Crime Stopper.

17 Q. I understand that, but as an investigating
18 detective, scale of one to ten, one is low, ten is
19 the highest and you have reports where there is a
20 five. Okay?

21 A. That --

22 Q. That would be something you want to follow
23 up on, isn't I?

1 A. That five is assigned or determined on the
2 form by the investigating detective at that time.
3 I wasn't the investigating detective. He put that
4 five down, therefore, he's the one that determines
5 the amount of investigation that goes into that.

6 Q. And I don't dispute that, but now I'm asking
7 Detective Bart Beavers if you rate the information
8 you received on a scale of one to ten as a five,
9 that would be something you would want to follow
10 up on, wouldn't it?

11 A. Well, my five might be different than your
12 five. There's no set --

13 Q. You're misunderstanding me. Okay? Forget
14 about me or forget about whoever set that five.
15 I'm talking about Detective Bart Beavers received
16 information about a homicide rated a five. Is
17 that something you would not follow up --

18 MR. LOISEL: Objection, Your Honor.

19 THE COURT: This is getting too far
20 afield. Sustained.

21 Q. As it relates to Janet Wilson, did you
22 follow up on information that she provided you?

23 A. Yes.

1 Q. And as it relates to this case, no physical
2 evidence whatsoever to corroborate what she said,
3 correct?

4 A. Correct.

5 Q. Just her word?

6 A. Yes.

7 Q. And as far as her word, you heard her from
8 this witness stand say some of it was true, some
9 of it was a lie as far as her statement to me,
10 correct?

11 A. Are you referring to a statement to you?

12 Q. Yes.

13 A. Yes.

14 Q. And you also heard her say that she told me
15 that she took the information that she heard from
16 the street, made up some stuff to convince the
17 detectives. Did you hear her say that from that
18 witness stand under oath?

19 A. I did.

20 MR. WINGATE: Just one second, Your
21 Honor. I may be finished.

22 Q. Detective Beavers, did you in your role as
23 investigator in this case in reviewing the reports

1 and the Crime Stopper receive -- review any
2 reports of possible suspects who were also drug
3 dealers?

4 A. Yes.

5 Q. More than two or three?

6 A. I can't say that, but there were some that
7 were drug dealers.

8 Q. And in all of the Crime Stopper reports that
9 you received, none ever included the name of
10 Robert Wilson, did it?

11 MR. LOISEL: Objection, Your Honor.

12 That goes to hearsay.

13 MR. WINGATE: I'll rephrase it a
14 different way.

15 Q. Based upon your review of all the Crime
16 Stopper reports, did you see the name of
17 Robert Wilson?

18 MR. LOISEL: Objection, Your Honor.

19 Still hearsay. He's going to the truth of the
20 matter asserted.

21 THE COURT: No. I'm going to allow
22 it.

23 A. Yes.

1 Q. All right. Would you like to show me the
2 report?

3 A. Uh-huh.

4 MR. WINGATE: Your Honor, could I have
5 just one second, please?

6 THE COURT: Do you want to show it to
7 Mr. Loisel?

8 MR. WINGATE: Oh, yeah.

9 MR. LOISEL: I'm aware of it.

10 Q. Detective Beavers, all of the Crime Stopper
11 reports that you had in this case provided to the
12 State of Ohio, is that correct, as part of the
13 investigation, you gave to the Prosecutor; is that
14 correct?

15 A. Yes.

16 Q. All right. And pursuant to the rules of
17 discovery that you're aware of, they were given to
18 me?

19 A. Yes.

20 Q. This report you did not turn in until
21 Tuesday of this week; is that correct?

22 MR. LOISEL: Your Honor, that has no
23 relevance as to when this was turned over to the

1 Defense Attorney. It was turned over to the
2 Defense Attorney.

3 THE COURT: I'm going to allow it.

4 Q. This report was not given to the State to
5 give to Defense Counsel until Tuesday?

6 A. The report was referenced in my supplemental
7 report and the report was given to Mr. Loisel at
8 his request and it was given to you on Tuesday,
9 yes.

10 Q. That's the only time it was given, right?
11 And could I see your supplemental report that you
12 indicate it was referenced to?

13 A. Yes. Page 2. It is under evidence.

14 MR. WINGATE: Your Honor, could we have

18 MR. WINGATE: This is what I'm having a
19 problem with (indicating).

20 THE COURT: Okay. I understand. All
21 right.

22 MR. LOISEL: Judge, if we may,
23 depending on what the question is, what was or

1 was not provided in discovery is not an issue for
2 this jury to determine. It is not for their
3 consideration. If Mr. Wingate has an issue with
4 respect to discovery, he needs to talk to the
5 Bench about it. He just can't put it out in
6 front of the jury. There are rulings and
7 regulations that go along with discovery. If he
8 thinks the State violated those rules, that is
9 not for consideration in this trial. It is not
10 evidence in this trial.

11 THE COURT: He can inquire of this
12 witness whatever he knows. Facts are facts, you
13 know.

14 MR. LOISEL: Well, I understand.
15 That's fine, but I'm going to --

16 THE COURT: Okay.

17 (WHEREUPON THE PRECEDING DISCUSSION AT
18 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
19 WERE HELD.)

20 Q. I'm sorry. Could I see the entire report
21 that you've referenced? Maybe I just need the
22 front page. All right. Now, this report that
23 you're saying this page --

1 A. Yes.

2 Q. -- where you reference the report is dated
3 11-6-06; is that correct?

4 A. Yes.

5 Q. November the 6th of 2006, you've referenced
6 this police report?

7 A. Could I see the report just to make sure of
8 my dates?

9 Q. Yes.

10 A. That was the date I typed the report,
11 11-6-06.

12 Q. And that is the date that you referenced
13 that Crime Stopper report; is that correct?

14 A. In that section, yes.

15 Q. All right. And it wasn't given to --

16 MR. LOISEL: Objection, Your Honor. It
17 goes -- may we approach?

18 THE COURT: No. I'm going to allow
19 this question. Overruled.

20 Q. You gave it to the Prosecutor, who in turn
21 gave it to me on Tuesday, September the 2nd?

22 A. Is that a question?

23 Q. Yes.

1 A. Yes.

2 Q. So, for over a year you've had this report?

3 A. I've had it, yes.

4 Q. And when all of the other references from
5 Crime Stopper never mentioning Mr. Wilson were
6 turned over, this one you maintained?

7 A. Apparently the Prosecutor didn't get it the
8 first time, so he called and asked for the report.
9 It wasn't anything intentional, but he did not
10 have the report.

11 Q. I'm not saying it was intentional. Okay?

12 A. Okay.

13 Q. I'm saying that you maintained it until
14 September the 2nd.

15 A. I did.

16 Q. Would it be fair to say that you took the
17 time to go through all of the reports, police
18 reports, Crime Stopper reports and you turned
19 those over to the Prosecutor, everything but one?

20 A. That I know of. It was inadvertent.

21 Q. Did I give you the report back?

22 A. Yes.

23 Q. Let me see that for a second. And without

1 saying what that report said, that Crime Stopper
2 is not consistent with the facts of the homicide
3 of Brenda Navarre, is it?

4 A. That is correct.

5 Q. Just one second. I may be finished.

6 MR. WINGATE: Nothing further.

7 THE COURT: Redirect.

8 MR. LOISEL: Thank you.

9 - - -

10 REDIRECT EXAMINATION

11 BY MR. LOISEL:

12 Q. Detective, there's obviously a lot to talk
13 about these tips. With respect to Crime Stopper
14 tips, is it a challenge as a cold case detective
15 to try to resurrect old cases?

16 A. Yes.

17 Q. And with respect to cold cases, in general,
18 are there other tips in cold cases?

19 A. Yes.

20 Q. And with respect to tips in cold cases and
21 cases that happen now, do tips always pan out?

22 A. No.

23 Q. Sometimes do tips give you good information?

1 A. Sometimes, yes.

2 Q. What kind of other information can tips give
3 you?

4 A. They can give us information not only who
5 committed the crime, but who may be witnesses to
6 the crime, where evidence may be found as far as
7 location of where evidence or a body in a case of
8 a homicide. So, there are a lot of different
9 types of information that tips will give us.

10 Q. And is the information always relevant?

11 A. No.

12 Q. Sometimes do the tips have nothing to do
13 with the actual event that they are trying to tip
14 on?

15 A. Actually the majority of the tips
16 unfortunately are that.

17 Q. What do you mean "are that"?

18 A. Are tips that may not be relevant, that
19 people may read something in the paper and give
20 information based on what they hear or see on the
21 street. It is information that can't be
22 substantiated.

23 Q. Now, with respect to this investigation,

1 Mr. Wingate asked you a number of questions about
2 the tips, and did you review them from the
3 original investigators. Do you remember that line
4 of questioning?

5 A. Yes.

6 Q. And to your knowledge did that investigator
7 follow up on any and all information that he had
8 at the time?

9 A. There were Crime Stopper disposition forms
10 with the majority of the tips, yes.

11 Q. And if you know, as a result of all of those
12 tips and the information and the follow-up, was a
13 suspect developed back in the 1990's?

14 A. No.

15 Q. So what conclusion does that lead you to?

16 A. That the investigator back in the 1990's did
17 not develop a good suspect on the homicide of
18 Brenda Navarre.

19 Q. Let's jump forward to this tip that
20 Mr. Wingate is talking about. Did that tip give
21 you any pertinent information with respect to this
22 investigation?

23 A. No. The tip itself had case facts that were

1 not even close to being consistent with the
2 homicide that occurred.

3 Q. So, that in a long line of other tips were
4 relatively useless?

5 A. Correct.

6 Q. That tip didn't lead you to the Defendant,
7 did it?

8 A. No.

9 Q. What did?

10 A. Janet Wilson.

11 Q. Finally, with respect to these reports and
12 the tips and the investigation that preceded back
13 in the 1990's, specifically 1993 forward, did you
14 author any of those reports?

15 A. From '93 --

16 Q. To 2006 when you came on this case.

17 A. I did not.

18 Q. So the information, whatever it may have
19 been, you were not privy to, correct?

20 A. Correct. That's correct.

21 Q. You -- had you gotten the information, you
22 may have proceeded differently possibly, correct?

23 A. Every investigator has their own style, yes.

1 I possibly could have proceeded in a different
2 fashion.

3 Q. Just a couple of other things. Do recall
4 the line of questioning with respect to
5 Mr. Wingate and there was a court proceedings
6 where you were ordered along with the State of
7 Ohio and Defense Counsel not to have any contact
8 with Janet Wilson? Do you recall that line of
9 questioning?

10 A. I do, yes.

11 Q. And Mr. Wingate asked you, in fact, you had
12 contact with her later that day when she was
13 arrested, correct?

14 MR. WINGATE: I would object. I did not
15 ask that question. I asked was she arrested.

16 THE COURT: I recall that question.

17 MR. WINGATE: I asked was she arrested.

18 Q. Do you recall that line of questioning?

19 A. That she was arrested, yes.

20 Q. If you're aware, did Attorney Wingate
21 violate that order and contact Janet Wilson?

22 MR. WINGATE: I'm going to object and
23 ask that we approach.

1 MR. LOISEL: He opened the door, Judge.

2 MR. WINGATE: Mike, you know -- may we
3 approach, Your Honor?

4 THE COURT: Come on up.

5 (WHEREUPON THE FOLLOWING DISCUSSION WAS
6 HELD AT THE BENCH.)

7 MR. WINGATE: First of all, I have never
8 implied that he violated anything. What she had
9 said on the witness stand was that she was
10 threatened.

11 MR. LOISEL: Judge --

12 THE COURT: The testimony was that the
13 marshals arrested her, so I don't know if this
14 witness had any contact. I don't recall any
15 testimony about that.

16 MR. LOISEL: Well, I apologize. I
17 think -- I thought that there was.

18 MR. WINGATE: No.

19 THE COURT: He didn't say he did.
20 They arrested her, so I'm going to sustain the
21 objection.

22 (WHEREUPON THE PRECEDING DISCUSSION AT
23 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS

1 WERE HELD.)

2 MR. WINGATE: Sustained, Your Honor?

3 THE COURT: Sustained.

4 Q. And in addition to -- I'm going back and
5 jumping around a little bit -- all these tips,
6 Mr. Wingate asked you about a van and bloody
7 sweater, correct?

8 A. Yes.

9 Q. With respect to your review of the
10 information in this investigation, did that bloody
11 sweater or any investigation into the bloody
12 sweater or the van help you develop any suspects
13 with respect to the homicide of Brenda Navarre?

14 A. The reports from the investigation back then
15 do not indicate that it helped develop any
16 suspects.

17 MR. LOISEL: If I may just have a
18 moment, Judge.

19 Q. Mr. Wingate asked you also about
20 Chad Culpert and the destruction of evidence,
21 correct?

22 A. Yes.

23 Q. If you had your way, would you like to have

1 that evidence still available to you?

2 A. Absolutely, yes, I would.

3 Q. Why?

4 A. Because there's the ability through new
5 sciences, DNA, and the applicability to law
6 enforcement and our investigations to obtain DNA
7 from, for example, the rock or touch DNA from the
8 clothing. That would be something that we would
9 really like to have.

10 Q. And as Mr. Wingate said, possible evidence
11 from the evidence that had been destroyed could
12 either implicate the Defendant or vindicate him,
13 correct?

14 A. Yes, that's correct.

15 Q. But it is not available to us?

16 A. That is correct, not available.

17 Q. And finally, Mr. Wingate asked you with
18 respect to your conversations with Janet Wilson,
19 that aside from her work, she has nothing else to
20 corroborate what she told you; do you remember
21 that question? I believe it was a question in
22 that realm.

23 A. Aside from her word?

1 Q. Yes.

2 A. I thought you said work.

3 Q. Her word.

4 A. No. That's not correct. The statement that
5 her son Alfonzo Davis made to me corroborated what
6 she told me.

7 Q. And Brenda Navarre is dead, correct?

8 A. Yes, that's correct. And the information
9 that she provided me was consistent with the facts
10 that I know of the crime.

11 MR. LOISEL: Thank you, Detective.

12 Nothing further.

13 - - -

14 RECROSS EXAMINATION

15 BY MR. WINGATE:

16 Q. First question I have is this: You say the
17 son corroborated the information what
18 Janet Wilson --

19 THE COURT: Did you hear.

20 Q. Did you hear Janet Wilson -- I'm sorry --
21 Alfonzo testify from that seat that you're seated
22 in and say I don't know if Robert told me or my
23 mom told me. Did you recall her saying that --

1 him saying that?

2 A. Yes.

3 Q. All right. So, if she told him that, would
4 you agree with me, common sense and reason if he
5 repeats what she says, corroborates what she said?

6 A. Also said what Robert told him.

7 MR. WINGATE: Your Honor, I'll ask that
8 that response be stricken as non-responsive.

9 Q. My question to you --

10 MR. LOISEL: Is there a ruling?

11 THE COURT: I believe it was
12 responsive. Overruled.

13 Q. All right. Did you hear him from the
14 witness stand -- I understand what you're saying.
15 The question I'm asking you is did you hear him
16 from that witness stand under oath say both to me
17 and to the Prosecutor that I don't know whether it
18 was my mother or Robert that said these things; do
19 you recall that?

20 A. I recall that, yes, sir.

21 Q. You recalled in the police report he says
22 that his mother told him those things; do you
23 recall that?

1 A. His mother did tell him those things.

2 Q. All right. So then for you to sit here and
3 say that he corroborated what she said, common
4 sense and reason would say if she's the source and
5 he repeats it --

6 MR. LOISEL: Objection. Calls for
7 speculation.

8 THE COURT: It is argumentative.

9 Sustained.

10 Q. As it relates to the Prosecutor talking
11 about good Crime Stopper reports, bad Crime
12 Stopper reports, and you said the majority of the
13 tips are not -- may not be relevant; is that
14 correct?

15 A. That is correct.

16 Q. All right. But in this particular case you
17 had Crime Stopper reports that at least mentioned
18 one name on several occasions; is that correct?

19 A. Yes.

20 Q. You had police reports that gave you a
21 height and a name of a potential suspect; is that
22 correct?

23 A. Actually I reviewed reports that did that,

1 yes .

2 Q. Yes. And to the best of -- and we're
3 talking about through the 1990's, to the best of
4 your knowledge, none of these were followed up on;
5 is that correct?

6 A. I can't say that.

7 Q. All right. Can you say they were?

8 A. I can say that I looked at reports that
9 indicated that some were followed up on and the
10 disposition formed, and others silent on, but I
11 did not conduct those investigations.

12 Q. And the one -- I know you didn't conduct the
13 investigations, but he asked you about the 1990's
14 and whether or not a suspect was developed. You
15 had names and descriptions and you can't say
16 whether these reports were followed up on or not?
17 That's what I'm asking.

18 A. Collectively I can't say that.

19 Q. All right. And as a matter of fact, you
20 even had one that had a voice recognition and --

21 MR. LOISEL: Objection, Your Honor.

22 This goes beyond the scope.

23 THE COURT: I'm going to sustain it.

1 Q. As it relates to the van with the bloody
2 sweater, you said that didn't generate anything,
3 any follow up; is that right?

4 A. There was a submission to the lab of that
5 bloody sweater. There's no response to -- or
6 there was no written response to that submission.

7 Q. So would you agree with me then at that
8 point the ball was dropped in that case?

9 A. I can't say that. I don't know what the
10 investigators did at that time. No, as far as the
11 reports were concerned.

12 Q. It is 15 years later, do you have anything
13 in that file indicating that there was a follow up
14 with an analysis and a result taken as a result of
15 the request for an analysis of that bloody
16 sweater?

17 A. I do not have that result.

18 Q. Although there was a request; is that
19 correct?

20 A. Yes, that's correct.

21 Q. And so when you tell the Prosecutor that in
22 1990 you had no suspects, you did have suspects?

23 MR. LOISEL: Objection, Your Honor, he

1 didn't do anything.

2 THE COURT: Sustained.

3 Q. Let me rephrase. In the 1990's when you say
4 no suspects were developed, the reports that you
5 have indicate that there were suspects; is that
6 correct?

7 A. The Crime Stopper reports indicates
8 suspects, yes.

9 Q. And police reports?

10 A. Yes.

11 MR. WINGATE: Nothing further.

12 THE COURT: Any redirect?

13 MR. LOISEL: Just one moment, Judge.
14 Nothing further, thank you, Judge.

15 THE COURT: Thank you officer.

16 THE WITNESS: Thanks, Judge.

17 THE COURT: Who is your next witness?

18 MR. LOISEL: Judge, I believe we can
19 probably have a relatively short witness.

20 THE COURT: All right. Just take one
21 more witness and then we'll recess for the
22 morning.

23 MR. LOISEL: Your Honor, at this time

1 the State calls Detective Lou Vasquez.

2 THE COURT: Call Detective Vasquez.

3 - - -

4 SERGEANT LOIS VASQUEZ,

5 being first duly sworn by the Court, testified as
6 follows:

7 THE COURT: Be seated here, sir.

8 Please give us your name and spelling of your
9 name.

10 THE WITNESS: Lou Vasquez,

11 V-A-S-Q-U-E-Z.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. LOISEL:

15 Q. Afternoon, sir. Can you -- still morning
16 but it is almost there. Can you introduce
17 yourself to us, please?

18 A. I'm Lou Vasquez. I'm a sergeant with the
19 Toledo Police Department and I work investigative
20 services on the midnight shift.

21 Q. I called you detective. Explain to us,
22 Sergeant, what are your duties presently?

23 A. I supervise the detectives, person

1 detectives on the night shift. We handled all the
2 shootings, murders, homicides, home invasions,
3 burglaries, anything that happens on the midnight
4 shift.

5 Q. Now, just by way of background, how long
6 have you been a member of the Toledo Police
7 Department?

8 A. I'm in my 37th year.

9 Q. And I don't want to go through all 37 years,
10 but can you briefly tell us the different areas
11 you've worked in the police department?

12 A. Well, I've worked patrol, I worked the
13 Communications Bureau and spent most of my career
14 working the Metro Drug Task Force.

15 Q. And when did you finish with that portion of
16 your career?

17 A. Approximately eight years ago.

18 Q. And what did you do after that?

19 A. And then worked communications for a few
20 years and then went into investigative services.

21 Q. Where you are currently?

22 A. Yes.

23 Q. And with respect to your duties as a Toledo

1 Police Officer, did you ever have contact with
2 Janet Wilson regarding the homicide of
3 Brenda Navarre?

4 A. Yes, I did.

5 Q. Can you explain to us without going into
6 detail when that contact first happened?

7 A. Well, back in June of 2005, I was involved
8 in an investigation involving her grandson who was
9 a victim of a robbery. At that time she owned a
10 bar at the corner of Central and Isabella and her
11 grandson was robbed in front of that bar.

12 Q. And so you had contact with her?

13 A. Yes, she came in with her grandson during
14 that investigation and more or less for emotional
15 and moral support for her grandson.

16 Q. And did you talk to her then? How did the
17 homicide of Brenda Navarre come to light?

18 A. Well, shortly thereafter she called me on
19 the phone and told me that.

20 MR. WINGATE: I will object.

21 THE COURT: Yeah, sustained.

22 Q. Without telling us what she said, when is
23 the next time you had contact with her?

1 A. A few days later.

2 Q. And what was it regarding?

3 A. In regards to the murder of Brenda Navarre.

4 Q. And how did this communication take place?

5 A. Over the phone.

6 Q. And did you talk to her about the
7 Brenda Navarre homicide?

8 A. Yes, I did.

9 MR. WINGATE: Your Honor, I will object.

10 THE COURT: Well, that's a proper
11 question, but that's about as far as without
12 going into the merits of that conversation.

13 MR. LOISEL: Of course.

14 Q. You did talk to her about the homicide of
15 Brenda Navarre?

16 A. Yes.

17 Q. And let me ask you this: How many
18 conversations -- well, did you have any more
19 conversations with her regarding the homicide of
20 Brenda Navarre?

21 A. About a dozen conversations.

22 Q. And if you can recall the -- if you can
23 recall the specifics, where did these

1 conversations take place?

2 A. Well, some of them were over the phone, some
3 of them were at her bar. She owned another bar
4 called Brewski's on North Detroit. We had
5 conversations there, and then some of them were in
6 person where I would meet her on the street.

7 Q. And, again, without getting into the
8 specifics of these conversations, what did they
9 revolve around?

10 A. Around the homicide of Brenda Navarre.

11 Q. And at some point did you have a
12 conversation with her at the 212 or at the Toledo
13 Police Department across the street?

14 A. Yes, I did.

15 Q. And who was present for that conversation,
16 if you recall?

17 A. Well, it was myself and I believe
18 Investigator Tom Ross and Bart Beavers --
19 Detective Bart Beavers.

20 Q. And I don't want to sound redundant, but
21 what did that conversation revolve around?

22 A. The murder of Brenda Navarre.

23 Q. And was there anyone else at that

1 conversation in June of 2005 aside from the people
2 that you just mentioned?

3 A. No.

4 Q. And just one final question, Detective.
5 With respect to these conversations, were they
6 consistent with the first contact you had until
7 the last contact you had with Janet Wilson?

8 A. Yes, the story was always the same.

9 MR. LOISEL: Thank you, Detective.
10 Nothing further.

11 MR. WINGATE: Just one second, Your
12 Honor.

13 - - -
14 CROSS-EXAMINATION

15 BY MR. WINGATE:

16 Q. Just a couple of questions,
17 Sergeant Vasquez. The first bar you indicated
18 that she owned a Brewski's bar; is that correct?

19 A. That's correct.

20 Q. Does she still own it?

21 A. No.

22 Q. Having financial problems?

23 A. That's correct.

1 Q. Okay. And she was paid \$5,000 dollars to
2 appear before the grand jury; is that correct?

3 MR. LOISEL: Objection, Your Honor.

4 She did not get paid \$5,000 dollars to appear
5 before the grand jury. That is a
6 mischaracterization of the evidence.

7 THE COURT: Sustained.

8 Q. Prior to her being offered 50 crisp \$100
9 dollar bills, did she appear before the grand
10 jury?

11 MR. LOISEL: Objection, Your Honor.

12 This witness doesn't even know if she was offered
13 that money. He was not able to respond.

14 THE COURT: He can ask and the witness
15 can answer.

16 A. I don't know anything about what she was
17 paid or the series of evidence on --

18 Q. Let me stop you. But you do know she was
19 paid?

20 A. No, I don't.

21 Q. You don't know that?

22 A. No.

23 Q. All right. And as it relates to the first

1 conversation in '05, wasn't until October,
2 November of '06; is that correct, before she went
3 before the grand jury?

4 A. I don't recall when she went to the grand
5 jury.

6 Q. Well you know it wasn't in '05, correct?

7 A. That's correct.

8 Q. And you know it wasn't in the first six
9 months of '06?

10 A. That's correct.

11 Q. And you do know that Steve Forrester,
12 Sergeant Steve Forrester is in charge of the Crime
13 Stopper program?

14 A. Yes.

15 Q. And he is the individual that can allocate
16 money or dispense money to individuals?

17 A. Yes.

18 Q. And he was involved in conversations with
19 Mrs. Wilson; is that right?

20 A. Yes.

21 Q. And conversations prior to her appearing
22 before the grand jury?

23 A. I don't know the sequence of events there,

1 sir.

2 MR. WINGATE: All right. Nothing
3 further.

4 THE COURT: Anything else?

5 MR. LOISEL: No, Judge. Thank you.

6 THE COURT: Thank you very much. You
7 are excused. Can I see Counsel up here?

8 (WHEREUPON A DISCUSSION AT THE BENCH WAS
9 HELD OFF THE RECORD.)

10 THE COURT: All right. Ladies and
11 gentlemen of the jury, at this time we'll take
12 the noon recess. We'll reconvene these
13 proceedings at 1:15. Again, do not discuss this
14 case among yourselves, nor with anyone else. Do
15 not form or express an opinion about the case
16 until the case has been submitted to you. We'll
17 be in recess.

18 (LUNCH RECESS TAKEN.)

19 (WHEREUPON THE FOLLOWING DISCUSSION WAS
20 HELD OUTSIDE THE PRESENCE OF THE JURY.)

21 THE COURT: All right. We're in
22 chambers ready to commence this afternoon's
23 session. And, Mr. Loisel, I understand that you

1 have a motion or want to rest; is that correct?

2 MR. LOISEL: Judge, at this point after
3 having an opportunity to look through, and I'll
4 do this obviously in open court, but there's some
5 motions and procedural things that need to go on,
6 but, yes, at this point the State intends to rest
7 and I didn't know if the Court wants to address
8 motions subject to the admittance of the State's
9 Exhibits I believe 1 through 23.

10 THE COURT: Well, let's go through
11 the exhibits first. Do you want to get your
12 list? All right. Going through what I have is
13 we have State's Exhibit 1 is a picture of the
14 scene that was testified to by Detective Niemiec.
15 Is there going to be an objection to that?

16 MR. WINGATE: No.

17 MR. LOISEL: It is Officer Niemiec,
18 correct, that's who you're referring to as
19 sergeant.

20 THE COURT: Yeah.

21 MR. LOISEL: Okay.

22 THE COURT: Exhibit 2 are various
23 pictures that were testified to by

1 Officer Malone. 2 through 11, are there going to
2 be objections to those exhibits?

3 MR. WINGATE: 7, 8 and 9 are photographs
4 just of the rock on the hand truck or -- yeah,
5 the hand truck I think they call them. I would
6 object on the grounds of duplicity and one would
7 be sufficient. No objection to 2 through 6.

8 MR. LOISEL: Judge, I would just
9 indicate, and I can look at the actual exhibits,
10 the purpose for their admission is to show
11 different --

12 THE COURT: As I recall the testimony
13 of the witness, he indicated these were various
14 views, so I don't believe even if they are
15 duplicative, I don't believe they're prejudicial
16 and I'll allow them in.

17 Next we have State's Exhibit 12 are
18 statements. Is that Mr. Davis's statement?

19 MR. WINGATE: No, I don't think he was
20 going to admit that, although he had it marked.
21 It is a police report.

22 MR. LOISEL: Yes, that's what it is.
23 It is Detective Beavers' report.

1 THE COURT: Which included a statement
2 that Mr. Davis had made?

3 MR. LOISEL: Correct. We would
4 withdraw it at this time, Judge.

5 THE COURT: All right. Exhibit 12
6 will be withdrawn. 13 through 22, 13, 14 and 15
7 are various reports of Doctor --

8 MR. WINGATE: Barnett.

9 THE COURT: -- Barnett. Any
10 objection?

11 MR. WINGATE: To 12 -- 13, 14, 15?

12 THE COURT: Right.

13 MR. WINGATE: No objection.

14 THE COURT: And then pictures 16
15 through 22 are various autopsy reports and
16 photos.

17 MR. WINGATE: We would maintain our
18 objection previously that is the prejudicial
19 effect outweighs any probative value, and I think
20 it is prejudicial against the Defendant
21 Mr. Wilson, so we would object to those.

22 THE COURT: Your objection is noted
23 and overruled. Exception noted. Those will come

1 in.

2 MR. LOISEL: Just so we're clear,
3 Judge, weren't those previously admitted this
4 morning?

5 THE COURT: That is correct. Your
6 objection is restated again.

7 MR. WINGATE: Yes.

8 THE COURT: And ruling is reaffirmed.
9 State's Exhibit 23 is the Coroner's
10 Verdict. Any objection?

11 MR. WINGATE: No objection.

12 THE COURT: 24 is the certificate of
13 analysis by the lab.

14 MR. WINGATE: No objection.

15 THE COURT: And 25 is the report from
16 BCI.

17 MR. WINGATE: No objection.

18 THE COURT: I believe that's all the
19 State's exhibits; is that correct?

20 MR. LOISEL: Yes, Judge.

21 THE COURT: Are you going to be
22 resting at this time?

23 MR. LOISEL: Yes, Judge.

1 THE COURT: Okay. State rests. Any
2 motions?

3 MR. WINGATE: Yes, Your Honor. We would
4 make a Rule 29 motion indicating at this juncture
5 it is incumbent upon the State of Ohio in viewing
6 the light most favorable to the State to
7 introduce evidence whereby reasonable minds could
8 conclude that Mr. Wilson is guilty of this
9 offense of murder that is purposely causing the
10 death of Ms. Brenda Navarre. I believe the State
11 failed to meet that burden based on the evidence
12 adduced, and I would ask the Court for judgment
13 of acquittal, directed verdict.

14 THE COURT: Mr. Loisel.

15 MR. LOISEL: Judge, I think with
16 respect to the Rule 29 motion, as Mr. Wingate
17 indicated, it has to be thought about in the
18 light most favorable to the State. The State has
19 to put on a prima facie case with respect to this
20 Defendant's guilt. I believe there's enough
21 testimony and evidence put in front of this jury
22 where reasonable minds could differ and allow
23 them to consider the evidence, therefore, I think

the Rule 29 motion should be denied.

2 THE COURT: Certainly a lot of this
3 evidence would be characterized as
4 circumstantial, but I believe there's enough at
5 this point to go to the jury on a prima facie
6 basis, so I'm going to allow the case to go to
7 the jury at this point and the motion is
8 overruled but the exception is noted. Are you
9 ready to go?

10 MR. WINGATE: Yes.

THE COURT: You have any witnesses?

12 MR. WINGATE: Could you give us maybe
13 about five minutes? We need to confer, could we
14 go back outside?

15 THE COURT: Sure.

16 (OFF THE RECORD.)

17 MR. WINGATE: Back on the record.

18 THE COURT: Back on the record.

19 MR. WINGATE: Your Honor, I would -

20 I'll indicate pursuant to discussions with
21 Mr. Wilson and co-counsel, Mr. McElroy, we will
22 not be presenting any evidence and we'll renew
23 our motion for a Rule 29 judgment of acquittal.

1 I'll indicate whereas the State correctly
2 stated that it was the State should at least
3 present a prima facie case relative to the
4 evidence in this matter, and that the -- at the
5 close of its case, that is the burden; however,
6 at the close of the entire case with the Defense
7 aspect and us not presenting any evidence, the
8 burden now rises to proof beyond a reasonable
9 doubt. I think at this juncture based upon the
10 evidence that has been adduced from this witness
11 stand that the State had not met its burden
12 whereby reasonable minds could conclude beyond a
13 reasonable doubt that Mr. Robert Wilson is guilty
14 of murder, that is purposely cause the death of
15 Brenda Navarre, and as such ask the Court for
16 Rule 29, judgment of acquittal.

17 MR. LOISEL: Judge, at this point the
18 State does not have to prove the case beyond a
19 reasonable doubt. We have to be able to submit
20 to the jury for their deliberation to decide
21 whether it is proven beyond a reasonable doubt.
22 With that in mind we ask that this motion be
23 denied.

1 THE COURT: I think the jury is going
2 to have to make that determination as to whether
3 proof beyond a reasonable doubt has been attained
4 or not. I'm going to overrule your motion at
5 this point and we'll let the jury deal with it.
6 How are we fixed for argument at this point? And
7 instructions, have you had an opportunity to --

8 MR. LOISEL: Judge, I don't know if
9 Ms. Johnson has had an opportunity to.

10 THE COURT: She gave me a rough draft.
11 Do you want to take a look at it and see if
12 you --

13 MR. LOISEL: As I stated earlier,
14 Judge, and I think obviously everyone has their
15 own input. I would prefer to get this case to
16 the jury today. I know that they would be able
17 to at least hear closing arguments. I don't know
18 what Defense Counsel's thoughts are, but if an
19 acceptable rendition of the jury instructions can
20 be put together in a reasonable amount of time, I
21 don't know why we couldn't proceed today with
22 closing.

23 MR. WINGATE: Your Honor, I'll quite

1 frankly indicate that I'm not in a position to go
2 forward. Had I known, we would -- I would have
3 worked on closing arguments over the lunch break,
4 but I did not with the understanding that the
5 Court had concluded or felt that we would be
6 proceeding to closing argument and finishing this
7 case tomorrow morning. That's what I would be in
8 a posture to do at that time. I'm not available
9 now.

10 THE COURT: Well, it is now 20 minutes
11 to 2:00 or 25 minutes to 2:00. We're going to
12 have to go through these instructions and that
13 will take a little while. I think that I would
14 prefer to just spend some time going over these
15 arguments this afternoon. I'll release the jury
16 early, have them back here first thing in the
17 morning. You'll know what the instructions are
18 going to be at that point. You'll be able to
19 tailor your arguments accordingly, so I'm going
20 to release the jury early today and then we'll
21 work on these instructions.

22 MR. WINGATE: All right.

23 THE COURT: All right. So, let's go

1 back on the record, let the jury go and we'll
2 come back at what, 9:00 o'clock tomorrow morning?

3 MR. WINGATE: That's fine.

4 MR. LOISEL: Well, with respect to
5 releasing the jury, obviously the State needs to
6 rest and Defense needs to rest before we do that,
7 right?

8 THE COURT: We'll do it on the
9 record -- or we'll do it in front of the jury.
10 Okay. Very good.

11 (WHEREUPON THE PRECEDING DISCUSSION
12 OUTSIDE THE PRESENCE OF THE JURY CONCLUDED AND
13 THE FOLLOWING PROCEEDINGS WERE HELD.)

14 THE COURT: Mr. Loisel.

15 MR. LOISEL: Thank you, Judge. At this
16 point, the State of Ohio rests. We would ask
17 that State's Exhibits 1 through 11 be admitted
18 into evidence as well as State's Exhibits 13
19 through 25 at this point.

20 THE COURT: All right.

21 MR. LOISEL: We would withdraw State's
22 Exhibit 12.

23 THE COURT: All right. Pursuant to

1 the Court's previous rulings, those exhibits will
2 come in. Mr. Wingate.

3 MR. WINGATE: Yes, Your Honor. I'll
4 indicate on behalf of Mr. Wilson and Mr. McElroy,
5 we will not present any evidence and we will
6 rest.

7 THE COURT: All right. The Defendant
8 rests. Ladies and gentlemen of the jury, at this
9 time all of the evidence that you will be hearing
10 in this case is now in. The next stage in this
11 process will be the coming up with a set of final
12 instructions. This is a serious case and there
13 are a number of things that the Court and the
14 attorneys are going to have to go over to
15 formulate a proper set of instructions. That
16 typically takes a while and then after that has
17 been agreed upon, the attorneys will have an
18 opportunity to address you in closing arguments.
19 Due to the fact that we're now in mid afternoon,
20 we're going to recess these proceedings today.
21 The attorneys and I will be working the rest of
22 this afternoon, but you folks will return
23 tomorrow at 9:00 o'clock, at which time you will

1 hear the final arguments of Counsel and the final
2 instructions by the Court and then you can
3 commence with your deliberations.

4 So, again, do not discuss this case among
5 yourselves, nor with anyone else, including
6 spouses and significant others. Again, we'll
7 remind you that you should avoid reading The
8 Blade or any other newspaper tonight and we'll
9 see you fresh and early in the morning, at which
10 time, the case I expect will be handed to you
11 before -- a little before noon. Anything else at
12 this time?

13 MR. WINGATE: Nothing further.

14 THE COURT: All right. We'll be in
15 recess.

16 (RECESS TAKEN.)

17 (WHEREUPON THE FOLLOWING DISCUSSION WAS
18 HELD OUTSIDE THE PRESENCE OF THE JURY.)

19 THE COURT: Back on the record. Let
20 the record reflect that we are in chambers going
21 over proposed instructions and procedures.
22 Preparatory to the final arguments of Counsel,
23 and the Defendant has indicated that it was his

1 intention to introduce his two exhibits before
2 resting since those items were in the State's
3 possession. It slipped his mind. Do you want to
4 move those exhibits at this time, Mr. --

5 MR. WINGATE: We do, Your Honor,
6 Defendant's Exhibits A and B into evidence.

7 THE COURT: Mr. Loisel.

8 MR. LOISEL: Well, Judge, I was going
9 to bring this to the Court's attention. They
10 weren't in the State's possession. All exhibits
11 were in chambers when we were discussing those
12 exhibits. The State will object. Obviously
13 Defense Counsel has rested and this case has been
14 presented, however, as I said, the State was
15 going to bring this to the Court's attention and
16 Mr. Wingate's attention due to the fact of not
17 admitting these two items would probably lead to
18 argument for ineffective assistance of Counsel
19 later on down the line, so ultimately these
20 exhibits probably do need to be admitted but we
21 need to object as --

22 THE COURT: I'm going to allow you to
23 reopen your case solely for the purpose of moving

1 those exhibits. Are there objections to the
2 exhibits themselves?

3 MR. LOISEL: Not with respect to
4 Exhibit A, which I think is the letter written by
5 Janet Wilson. With respect to Exhibit B, I don't
6 think it was ever authenticated as to being in
7 the same condition or substantially the same
8 condition as it was when she was presented it by
9 Attorney Wingate back whenever it was presented
10 to her.

11 MR. WINGATE: Your Honor, I'll indicate
12 from the witness stand I actually gave her the
13 exhibit. She looked at it. We went through the
14 various paragraphs of it. The Prosecutor, as a
15 matter of fact in his redirect examination
16 covered the paragraphs that I had not spoke of,
17 and the witness from the witness stand attested
18 to each one of the statements saying -- or each
19 one of the paragraphs contained in the entirety
20 of the document saying that it was containing
21 true and false statements.

22 So, she did recognize it, and was aware
23 of it. She even indicated that it was gone over

1 with her at the rehab center and that there were
2 corrections that she made to the document,
3 however, she still could not sign it at that
4 time. So, recognizing accepting the --
5 recognized the document, accepting the
6 information containing therein as being --
7 contained therein as being accurate and true,
8 testified to by this witness.

9 THE COURT: This was a document that
10 had your changes noted on it?

11 MR. WINGATE: Changes that she had
12 instructed me to make, yes.

13 THE COURT: Well, certainly a lot of
14 testimony about that particular exhibit. I'm a
15 little troubled by the fact that these are notes
16 that you prepared rather than the witness,
17 although I -- in light of the testimony about
18 that document, it appears that she did adopt
19 those statements in the sense that you prepared
20 those at her -- you prepared those at -- as a
21 memorialization of her statements and she did
22 adopt that as an accurate representation as you
23 stated. It is a hearsay document. I'm going to

1 let A in. I'm going to let you argue B but I'm
2 not going to admit B. You can -- and you'll both
3 have copies available. You'll be able to use
4 that for argument purposes.

5 MR. MCCELROY: Judge, with regard to B, I
6 think or it is the Defendant's position that none
7 of the statements in that document are offered to
8 prove the truth of any matters asserted, just
9 that they were said by Janet Wilson. I think
10 both parties have admitted --

11 MR. LOISEL: No.

12 THE COURT: I'm going to allow you to
13 put whatever spin on it you want. You can waive
14 it in front of the jury and you can read from it,
15 but it is not going to go in. It is a document,
16 so -- okay. Anything else?

17 MR. LOISEL: No. Are we going to
18 then -- when can we expect a final copy of the
19 jury instructions I guess?

20 THE COURT: Well, I don't have a
21 bailiff in here. As soon as she can type it up,
22 why we'll -- do you want to come in at 8:30
23 tomorrow morning and just take a look at them?

1 MR. LOISEL: Well, I would assume if
2 there's a way that we can get them before the end
3 of the day and obviously --

4 THE COURT: We can try.

5 MR. LOISEL: And obviously no -- why
6 don't -- State's suggestion is if there are any
7 problems, obviously we can come to the Court
8 first thing in the morning, but --

9 THE COURT: We'll trying to get them
10 to you before you leave today.

11 MR. WINGATE: The only other thing from
12 the Defense is we would, again, renew our motion
13 that a complete copy of the Prosecutor's file be
14 made and turned over to the Court and sealed for
15 appellate purposes in the event there is a
16 conviction in this case.

17 Again, as the Court is aware, we had at
18 least one situation at the initial stages of the
19 trial wherein there were statements.

20 Specifically Detective Seymour would have
21 attested to that phone conversation that was
22 made -- purportedly made by Brenda Navarre
23 indicating frantic crying, that was never

1 produced for Defense Counsel, even though State
2 was aware of it and we had made a request that
3 this information be made pursuant to discovery
4 supplied to us.

5 More importantly, at the end of the
6 trial, Detective Beavers talked about a Crime
7 Stopper report which listed the name of
8 Robert Wilson as a potential suspect. That was
9 not supplied to Defense Counsel until September
10 the 2nd, the day of trial, although that document
11 had been, in fact, in the possession of Detective
12 Beavers for a period of time. I would
13 respectfully ask the Court, even though they may
14 be considered minor, I can't point to anything
15 that may be major because I don't have the
16 Prosecutor's file. But for the purposes of
17 appeal and protecting the rights of Mr. Wilson, I
18 would respectfully ask the Court to revisit the
19 matter of having the State provide a complete
20 copy of its file for appellate purposes and
21 sealed for appellate purposes in this case.
22 Indicating, again, as we did with the motion when
23 we filed it, that it is not an extraordinary

1 request because it has been granted in at least
2 two other matters here in this Lucas County
3 Courthouse, one before the Honorable Charles
4 Wittenberg, and one before I believe it was
5 Judge Dartt -- no, I'm sorry. I take that back.
6 It was three judge panel, State of Ohio versus
7 Harmon. The Honorable Charles Doneghy as chief
8 judge on the three judge panel, Judge Bowman was
9 the other, and I can't remember the third Judge
10 at this time, and I do apologize, but that
11 request had been granted in this matter in at
12 least two different occasions and I would
13 respectfully ask the Court to do the same.

14 MR. LOISEL: Judge, this matter has
15 been addressed by this Court with respect to
16 Attorney Wingate's renewed -- renewed motion to
17 have the Prosecutor's file sealed and made
18 available for appellate purposes. This Court has
19 already ruled on that particular motion.
20 Mr. Wingate previously cited the two other cases
21 in his 25 years of practice he's had this happen
22 in two other cases and the Court still denied
23 that motion. He points to two things that

1 happened in this particular trial. One where a
2 statement of a witness was not made available to
3 him, and by the rules of the Criminal Rules of
4 Evidence, that statement does not have to be made
5 available to him, A, until that witness testifies
6 and, B, it is not material to the Defendant's
7 guilt or innocence. That statement was merely
8 part of motive. So, realistically, the State
9 argues that that statement never had to be
10 divulged to the Defendant.

11 Be that as it may, the other issue that
12 was brought forward this morning with respect to
13 a Crime Stopper tip, that was provided to
14 Mr. Wingate as soon as the State received that.
15 He couches his request -- strike that.

16 He asks that the Prosecutor's file be
17 sealed and we would just ask that that motion be
18 denied once again.

19 THE COURT: I'm going to think on it.
20 All right. We'll come back tomorrow.

21 MR. WINGATE: You want us here at 8:30?
22 THE COURT: I'll be here at 8:30 and
23 take a look at the final draft.

1 MR. LOISEL: Judge, I may not be
2 available until quarter after 9:00 tomorrow.

3 THE COURT: That's fine.

4 MR. WINGATE: That's fine.

5 THE COURT: Thank you very much.

6 (WHEREUPON COURT ADJOURNED FOR THE DAY ON
7 SEPTEMBER 4, 2008.)

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2 **C E R T I F I C A T E**

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6 I, THE UNDERSIGNED, HEREBY CERTIFY

7 THAT THE ABOVE AND FOREGOING IS A TRUE AND

8 COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE

9 TRIAL OF THE ABOVE-ENTITLED CAUSE.

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16 Stacey L. McDevitt, RPR

17 Official Court

18 Reporter

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